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In the United States Court of Appeals for the Eighth Circuit

No. 15469

ANNE M. EVANS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES

SUPPLEMENTAL RECORD

Testimony taken at the hearing on October 19, 1954:

ERWIN G. BUEHLMAIER called as a witness on behalf of petitioner.

[Tr. 29] Mr. Buehlmaier stated that he was a clerk in the Registry Division of the Post Office, but before testifying wanted to call the court's attention to Articles 4109 and 4110 of the Post Office Regulations. Witness was then excused.

[Tr. 31]

* * * * *

Miss EVANS. I want to take from that subpoena the facts on this. It is stipulated that the Director of Internal Revenue sent a deficiency letter for 1946, 1947, 1948 and 1949 to Miss Evans, the Petitioner, which was registered and delivered to her on March 3, 1952, and second, a registered letter was delivered to her on March 17, 1954, containing a deficiency letter for the 1950 taxes.

* * * * *

[Tr. 33] Miss Evans stated that the deficiency letter relative to the 1950 tax was dated March 5, was mailed on March 8, but was not received until March 17. The other deficiency letter relative to 1946 through 1949 was dated February 26, 1952, and was received by Miss Evans on March 3.

[Tr. 34–35] Direct Examination of ANNE M. EVANS called on behalf of petitioner.

* * * * *

The COURT. All right, Miss Evans, you are your own attorney. You just proceed and make your statement with reference to matters you want the Court to have.

* * * * *

[Tr. 41–42] Miss Evans stated that she found a statement of account prepared by the Laurel McCarthy Residential Property Real Estate Company which shows that the amount of $14,726.13 was received as the proceeds of the sale of the property at 7843 Gannon Avenue. That Company handled the sale. (Account received in evidence as Petitioner's Exhibit No. 1.)

[Tr. 42] Miss Evans offered the deficiency letters in evidence, that for 1946 being admitted as Petitioner's Exhibit No. 2 [Tr. 44] and those for the later years as Exhibit No. 4 [Tr. 45].

[Tr. 46–47]

* * * * *

The COURT. You offer now in evidence what? What do you call it?

Miss EVANS. The income that I had for 1946. I will offer that in evidence.

The COURT. What is it, an income-tax return? Is that what it is?

Miss EVANS. Yes. Here is this whole business.

Mr. HEGGIE. I'd like to examine it.

The COURT. Let counsel see it, please, Miss Evans. Is that a retained copy of your income-tax return?

Mr. HEGGIE. Miss Evans, aren't these the so-called amended returns you said you filed for the years 1946 to 1949? Aren't they the originals?

Miss EVANS. No, they are not the originals.

Mr. HEGGIE. That is the original typing, that is not a carbon copy. Those were never filed.

Miss EVANS. Why didn't you tell me that two years ago?

Mr. HEGGIE. You have the original copies. Obviously it couldn't be filed. It's your records.

Miss EVANS. I will testify to it now, Your Honor.

The COURT. Let's find out what we are offering now, without any sidelines.

Miss EVANS. This is the 1946 return, that was the amended return.

The COURT. Is that the return you filed or a copy of a return you retained?

Miss EVANS. It's a copy. The attorney stated he filed this.

* * * * *

[Tr. 48]

The COURT. The Court has just admitted in evidence an offer of petitioner of [four] exhibits, namely, nos. 7, 8, 9 and 10, being copies of the income-tax returns for the respective years 1946, 1947, 1948 and 1949. All right, counsel for the respondent will ask a few questions now, Miss Evans.

* * * * *

Cross Examination by Mr. Heggie:

[Tr. 49–50] Miss Evans stated that to the best of her knowledge she had received $4,102.65 from the Board of Education of St. Louis, Missouri, for 1946, that it had withheld $648, that she received rent from various rental apartments of $1,810, and that her attorney reported the sales price for 7843 Gannon Avenue as $15,000, and its cost in 1931 as $3,500.

* * * * *

[Tr. 50–51] She testified further that as far as she could remember she had received $791.25 from the Board of Education of St. Louis, Missouri, in 1947, that it had withheld $113.90, that her amended return showed that she had received $1,810 in gross rents for that year but she thought

the latter was an exaggerated amount, and also that her 1947 return showed $3,500 as the sale price for 4650 and 4652 Greer Avenue.

[Tr. 57] Miss Evans offered in evidence the real estate statement of the Hargraves Realty Company dated November 14, 1949, and signed by her which she stated shows the sale of 3910 Aldeen, and that the amount due the seller was $2,210.71, and it was accepted as Petitioner's Exhibit No. 13. She explained that in the general calculations they counted the whole $3,000 and did not take off the $700.

[Tr. 63–65] Miss Evans offered a demand note in evidence for $2,000 given to her for value received by Humphrey Marshall, Lucille Ballinger, and Francis Stilwell. She tried to collect on this from Marshall, but said he was very slippery, that she had collected $1,000 on the note when she sued the estate of Francis Stilwell, that she did not try to collect more from that estate because the deceased had a blind sister, and that she had never attempted to collect anything from Lucille Ballinger.

[Tr. 68–69]

* * * * *

Miss EVANS. I tender in evidence a proposal by Albert J. Well for the repair of the fire damage at 4651–4653 Greer, the proposal being $755.00 without repainting or rewiring the electric wiring, including, and I state that I got a proposal from another company. I don't have that here, named Kelly for $950.00.

* * * * *

By Mr. HEGGIE:

Q. When did this fire take place, Miss Evans? This is dated December 21, 1945, so that it would have been prior to that, is that correct?

A. Well, apparently the fire was in 1945, but the condition had to be remedied in 1946.

Q. The fire loss took place some time prior to the date of this document?

A. That's a good observation.

* * * * *

[Tr. 70–71] Miss Evans admitted that an amount was collected by her as rent from 4146 Papin Street in 1946 and reported on her amended return.

[Tr. 74–75] Miss Evans offered in evidence two musical records published by her under the name of The University Music Company, and stated that she had written about 100 songs.

[Tr. 79]

* * * * *

By Mr. HEGGIE:

Q. Miss Evans, did you ever keep a cash journal or any kind of receipts-and-disbursements book on the amount of money you took in from this so-called music business?

A. I have all these bank books, receipts right there. I even showed them to Mr. Garrison.

Q. Have you ever sold any of these songs? Have you ever made any money on the music business?

A. I have never made any money on it, no. * * *

* * * * *

[Tr. 80] Miss Evans also testified that she received no royalties for her music in the years 1946, 1947, 1948, 1949, or 1950.

[Tr. 98] Miss Evans testified that she had a two-ton truck garage of metal on one piece of property and that it was taken down and carried away in 1948. She stated a new one would cost around $900 or $1,000.

[Tr. 99] The property at 3910 Aldine was bought by Miss Evans in 1925 and had to have various improvements made, and the property at 3962 Aldine was remodeled.

[Tr. 100–101]

* * * * *

By Mr. HEGGIE:

Q. I want to show you the copy of the petition you filed in docket no. 40190 and I wanted to point out for the year 1948, I wish you would read no. "D".

* * * * *

A. The Collector has omitted an uninsured theft by negroes of a metal garage at——

Q. That was your claims on the year 1948. For the year 1950 you submitted a protest involving the year 1950. I wish you would read one of the statements you have here, you have signed this protest and swore to it?

A. Yes.

Q. If you will read here.

A. "The taxpayer includes property at 21st and Randolph with $200.00 rent on a metal garage which is making enough money to pay taxes. During 1950 it was reported by the next door neighbor some negroes loaded it on their wagon."

Q. You have claimed in your petition for 1948 and you have claimed it also in your protest for 1950. You didn't have two metal garages stolen, did you?

A. Just one.

* * * * *

[Tr. 102]

The COURT. Was it in 1948 or 1950 you had this garage stolen?

Miss EVANS. Only the one year.

The COURT. Which year was it?

Miss EVANS. I'd have to find the figures.

* * * * *

[Tr. 122–123] Cross Examination by Mr. Heggie:

Miss Evans stated she had attended various tax institutes offered by the Missouri Bar Association and also those of the American Bar Association; that while she did not claim too much knowledge of tax matters, she had gone to the Internal Revenue Bureau to get information to distribute to her mathematics classes and that she had taught her students how to fill out tax forms.

[Tr. 123–124]

* * * * *

Mr. HEGGIE. * * *

At this time the tax returns have not been offered for the Petitioner. For 1946 and 1947, we do not consider those as adequate returns for the Petitioner.

The COURT. Would you like to offer those for 1946 and 1947?

Mr. HEGGIE. No, Your Honor. We would like to offer the returns for 1948, 1949 and 1950.

* * * * *

The COURT. The Court will grant that permission. The Court now receives in evidence Respondent's Exhibits A, B and C, the tax returns of the Petitioner for the years 1948, 1949 and 1950.

* * * * *

Such returns were thus received in evidence as Respondent's Exhibits A, B, and C.

[Tr. 124–125] MARTIN GRISWOLD called as witness on behalf of the Respondent. Direct Examination—

Mr. Griswold stated he is an examining officer, that he examined Miss Evans' return for the years 1946 through 1950, and that he found she had admitted sales and rental income for the years examined.

[Tr. 126–127] He testified also as follows:

* * * * *

A. For the year 1946, the Petitioner informed that the Gannon Avenue property, which has been previously referred to, was sold for about $15,000.00. She told me further it cost her about $3,500.00. She wasn't sure about the price. She said she had done much in the way of improvements. No proof of capital expenditures were submitted. In my report the capital gain was reported as being what Miss Evans had told, $15,000.00 less $750.00 commission, also submitted by the Petitioner. The basis was taken as what it cost her $3,500.00, plus $3,000.00 for improvements upon which no evidence had been submitted. She did say $3,000.00 improvements were made, $3,000.00 in addition to what it cost her, for a total basis of $6,500.00.

By Mr. HEGGIE:

Q. That's the way you arrived at the gain on the Gannon Avenue property?

A. Yes.

Q. Will you explain how you arrived at the rental?

A. Miss Evans said she had received $1,810.00 in rentals as near as she could tell. Her word was accepted.

* * * * *

[Tr. 127–128] Mr. Griswold testified further that Miss Evans came in for a conference and submitted a considerable number of records, some of which were not appropriate, and the current expenditures in connection with the rental receipts did not appear to be as much as she probably would have incurred. So whereas he accepted her figure of $1,810 reported as rents, he did not think she had for any year more than $100 or $120 rental expenditures, and no evidence as to cost of the properties was submitted so that depreciation could be computed. He tried to make a fair allowance and allowed $905 as expenses although it was not proved. Thus he allowed her actually more than she had proved that she spent, and these rental properties were handled in the same way for the other years.

The witness stated further as to the sales of properties that to the best of his recollection, the sales prices were those given him by the taxpayer, that she brought a list of her properties but without any values except for the property at 4650 and 4652 Greer which was bought in 1925 for $3,225 and sold for $3,500 in 1947. The witness then stated: [Tr. 129–130]

> * * * Later on, she told me it had been sold for $3,000.00. I used the first figure she had given me, the $3,500.00. The taxpayer had nothing regarding cost and the history regarding all the properties. By and large, they were tax sales, condemnation sales, that sort of purchase which would indicate they were not open-market purchases. That indicated to me they were not bought at high prices. I have nothing at all other than the taxpayer's estimated $3,225.00 to go on and for the other properties there wasn't any estimate. I talked to several real-estate people who told me property generally in that period of time should have sold for two or three times as much as it cost. Using that as a basis, I assumed then for the purposes of my exam-

ination, since the taxpayer had no basis she could show me, that she must have paid at least $1,750.00 for it since it sold for $3,500.00. I had to make a further examination as to the allocation of the land and the building. I assumed then, further, that the lot had a value of $750.00 out of the $1,750.00, and the building $1,000.00. If that $1,000.00 valuation were correct of the building, and it had a 30-year life, which was undoubtedly long for the type of building, during the 23-year tenure she would have depreciated the property $766.67, which would have left her an adjusted basis, assuming the correctness of those figures of $988.33. I used the $1,000.00 because it was the closest round figure.

* * * * *

[Tr. 130] Mr. Griswold stated that he asked Miss Evans for her records, but the only records he saw were receipts for miscellaneous items, and nothing to show the cost of any capital assets concerned in his examination.

[Tr. 131-132] * * * *

Q. In setting up your report, which was the statutory notice basis, did you allow for depreciation, repairs and other expenses in capital items in excess of the receipted bills and other evidence Miss Evans turned over to you?

A. Yes, I would imagine the allowance—I don't think that the submitted bills could have exceeded more than $100.00 or $120.00 at the most for all the properties for any of the years. She was allowed more than that in any year.

Q. When you allowed Miss Evans these deductions for rental expenses and other items attributable to the property, did you have in mind that she must have incurred some repairs, maintenance, depreciation for which she had no evidence, so you gave her what you felt was reasonable in the light of all the facts involved?

A. Despite the lack of proof of that type of expenditure it was allowed in that amount because it was felt that she could not have exceeded that amount in any event.

Q. Do the amounts in your report tie in with the statutory notice mailed to Miss Evans?

A. Yes.

* * * * *

Cross Examination of Miss EVANS:

[Tr. 175] Miss Evans testified that Mr. Valentine gave her power of attorney to do everything in connection with his finances, that the Bank refused to pay out anything further after Valentine gave her his own check for $500 and that she had to use that to pay his room and board.

[Tr. 196] Mr. Heggie asked the Court to take judicial notice of three cases having to do with the nature of certain expenditures here. These cases are reported in 195 S. W. (2d) 902, 216 S. W. (2d) 124, and 217 S. W. (2d) 749.

Testimony taken on October 20, 1954:

[Tr. 160]

* * * * *

The COURT. You said something about that 1946 and 1947 returns. Did you want those?

Mr. HEGGIE. Here are the photostats.

The COURT. Do you want those in evidence? Those are the returns the Government said weren't sufficiently formal, the Government didn't consider them as returns.

Mr. HEGGIE. That's right.

The COURT. Those two documents will be introduced in evidence as Exhibits Nos. 48 and 49 for the respective years. Those two documents will be received in evidence as Petitioner's Exhibits Nos. 48 and 49.

* * * * *

U. S. TREASURY DEPARTMENT
OFFICE OF THE COLLECTOR OF INTERNAL REVENUE
U. S. COURTHOUSE AND CUSTOMHOUSE
ST. LOUIS 1, MISSOURI

IN REPLY REFER TO: Miscellaneous
IT:S:T:LK:HLC

February 26, 1952

Anna M. Evans
913 North 17th St.
St. Louis, Mo.

Dear Madam:

You are advised that the determination of your income tax liability for the taxable year(s) 1946, 1947, 1948 and 1949 discloses a deficiency of $ 7,211.12 and penalties of $110.56 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, WASHINGTON 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of IT:S:T:LK:HLC. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

Commissioner,

By

Collector

Enclosures:
Statement
Form 1276
Agreement Form

12

PETITIONER'S EXHIBIT NO. 2—PAGE 2

COLLECTOR OF INTERNAL REVENUE
St. Louis, Missouri
(Address)

District: First, Missouri
Supplemental Account No.

REPORT OF INCOME TAX AUDIT CHANGES FOR YEAR 1946

Taxpayer: Anne S. Prum
Address: 913 S. 12th Street
St. Louis, Missouri

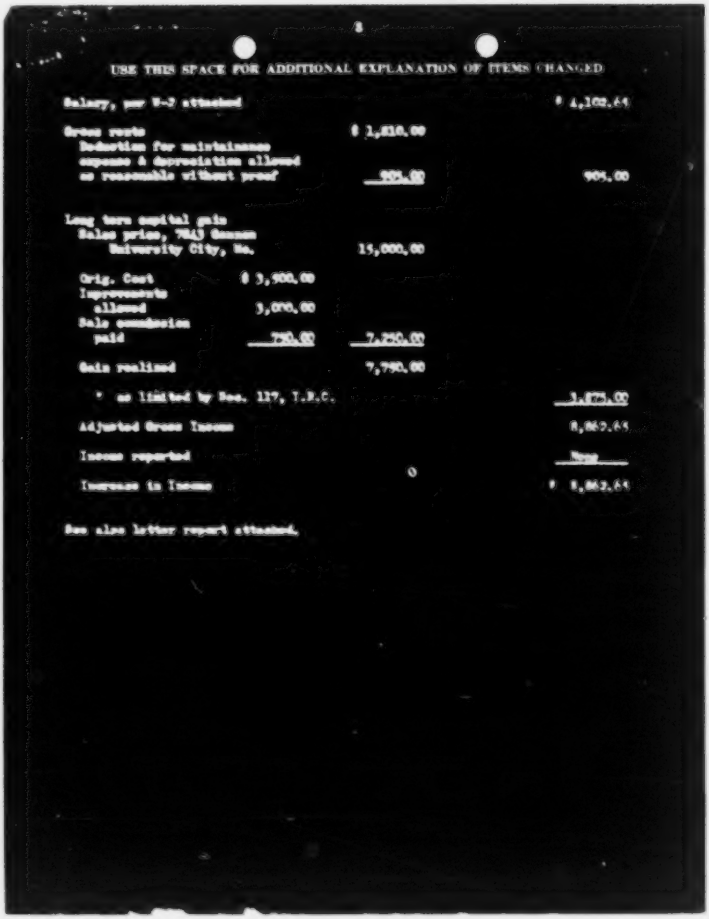
Account No. 063949
District: First, Missouri
Examined by [illegible] Field*

SUMMARY

Additional Tax or [illegible] (from line 21)*	$ 1,198.90
Penalty, if any	99.95
Interest from ____ to ____	
Total due	$

1. Adjusted Gross Income or Net Income on Return*		$ None
2. Additional income and/or unallowable deductions:		
(a) Increase in income	$ 8,862.65	
( )		
( )		
( )		
( )		
3. Total additions to income		8,862.65
4. Total		$ 8,862.65
5. Decrease in income and/or increase in deductions:		
( )	$	
( )		
( )		
( )		
6. Total decrease in income		
7. Corrected Adjusted Gross Income or Net Income*		$ 8,862.65
8. Less: Standard deduction, if applicable		500.00
9. Corrected Net Income		$ 8,362.65

PETITIONER'S EXHIBIT No. 2—PAGE 3 (relative to 1946)

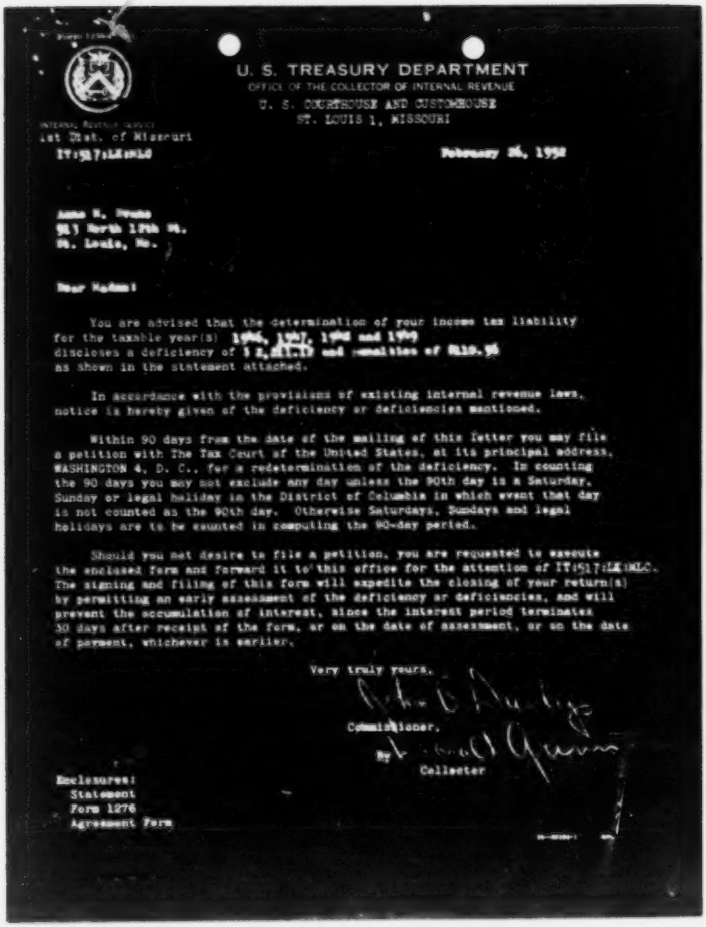


USE THIS SPACE FOR ADDITIONAL EXPLANATION OF ITEMS CHANGED

Salary, per W-2 attached			$ 4,102.64
Gross rents		$ 1,810.00	
Deduction for maintenance expense & depreciation allowed as reasonable without proof		905.00	905.00
Long term capital gain			
Sales price, 7845 Gannon University City, Mo.		15,000.00	
Orig. Cost	$ 3,900.00		
Improvements allowed	3,000.00		
Sale commission paid	750.00	7,650.00	
Gain realized		7,790.00	
* as limited by Sec. 117, I.R.C.			3,895.00
Adjusted Gross Income			8,862.64
Income reported			None
Increase in Income			$ 8,862.64

See also letter report attached.

PETITIONER'S EXHIBIT NO. 4—PAGE 1



U. S. TREASURY DEPARTMENT
OFFICE OF THE COLLECTOR OF INTERNAL REVENUE
U. S. COURTHOUSE AND CUSTOMHOUSE
ST. LOUIS 1, MISSOURI

INTERNAL REVENUE SERVICE
1st Dist. of Missouri
IT:S17:LE:MLC

February 26, 1952

Anna M. Brooks
913 North 12th St.
St. Louis, Mo.

Dear Madam:

You are advised that the determination of your income tax liability for the taxable year(s) 1946, 1947, 1948 and 1949 discloses a deficiency of $ 2,811.13 and penalties of $110.56 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, WASHINGTON 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of IT:S17:LE:MLC. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

Commissioner,

By L. [illegible] Quinn
Collector

Enclosures:
Statement
Form 1276
Agreement Form

PETITIONER'S EXHIBIT NO. 4—PAGE 4

Name Anna M. Brand

Year 1947

SCHEDULE
EXHIBIT

EXPLANATION OF ITEMS

Salary, per W-2		791.25
Gross rents	1,810.00	
Deduction for maintainance, expense and depreciation allowed as reasonable without proof	905.00	905.00
Long term capital gain		
Gross sales price, real property sold	3,500.00	
Basis allowed in excess of accumulated depreciation	1,000.00	
Gain realized	2,500.00	
Gain as limited by Sec. 117, I.R.C.		1,250.00
Corrected income		2,946.25
Income reported		None
Increase in income		2,946.25

176622-O-56-3

PETITIONER'S EXHIBIT No. 4—PAGE 7

Form 886
U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Octobe 1949

Taxpayer Anne R. Evans

ADJUSTMENTS TO INCOME Year ended 1948

1. Adjusted gross income per return*		$ 1800.00
2. Additional income and unallowable deductions:		
(a) Additional income	$ 2955.00	
( )		
( )		
( )		
( )		
( )		
( )		
3. Total additions to income		$ 2955.00
4. Total		$ 4395.00
5. Nontaxable income and additional deductions:		
(a)	$	
( )		
( )		
( )		
( )		
6. Total deductions from income		$
7. Adjusted gross income or net income as corrected*		4395.00
8. Less: Standard deduction, if applicable		
9. Corrected net income		$

Have prepayment credits been verified? Yes ☐ No ☐

Agreement, Form ___ has / has not been secured and is attached to return for year ended*

Remarks:

Gross rents	1,110.00	
Reduction for maintenance expense & depr. allowed as reasonable in the absence of records & without proof	555.00	555.00
Long term capital gain:		
Gross sales price real property sold	6,300.00	
Basis allowed in excess of accumulated depreciation	2,300.00	
Gain realized	4,000.00	
Gain as limited by Sec. 117		2,000.00
Total additional income		2,555.00

*Strike out words not applicable.

PETITIONER'S EXHIBIT No. 4—PAGE 10

U. S. TREASURY DEPARTMENT
Internal Revenue Service

Taxpayer Anne B. Evans

ADJUSTMENTS TO INCOME Year ended 1949

1. Adjusted gross income or net income per return*		$ 4900.00
2. Additional income and unallowable deductions		
(2a)	$ 1552.50	
( )		
( )		
( )		
( )		
( )		
3. Total additions to income		$ 1552.50
4. Total		$ 6452.50
5. Nontaxable income and additional deductions		
(5a)	$	
( )		
( )		
( )		
6. Total deductions from income		$
7. Adjusted gross income or net income as corrected		6452.50
8. Less: Standard deduction, if applicable		605.25
9. Corrected net income		$ 5847.25

Have overpayment credits been verified? Yes ☐ No ☐

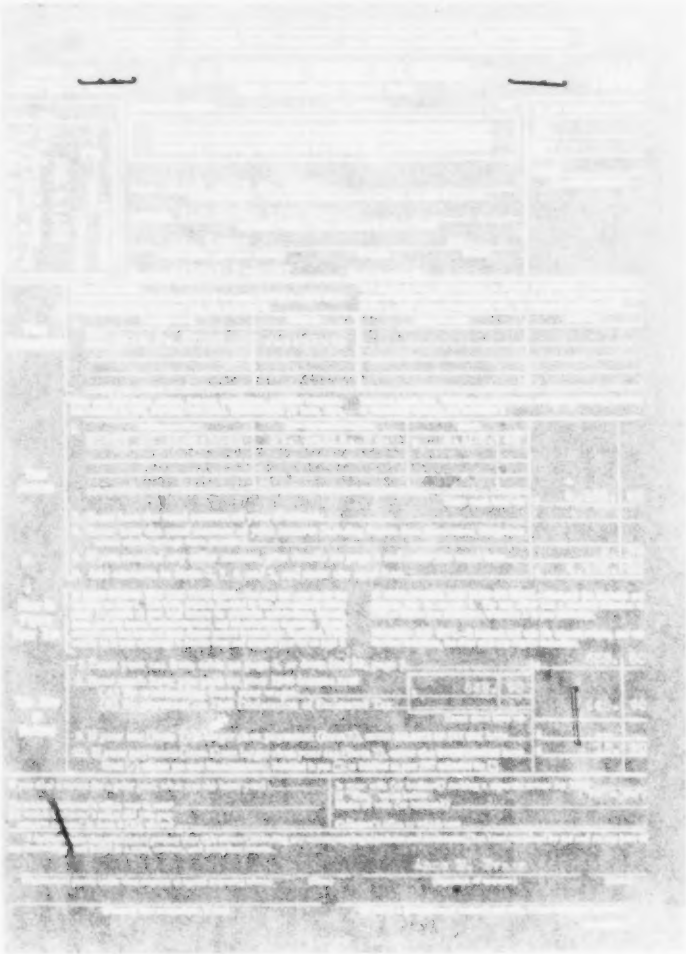
Agreement, Form [has / has not] been secured and is attached to return for year ended*

Remarks:

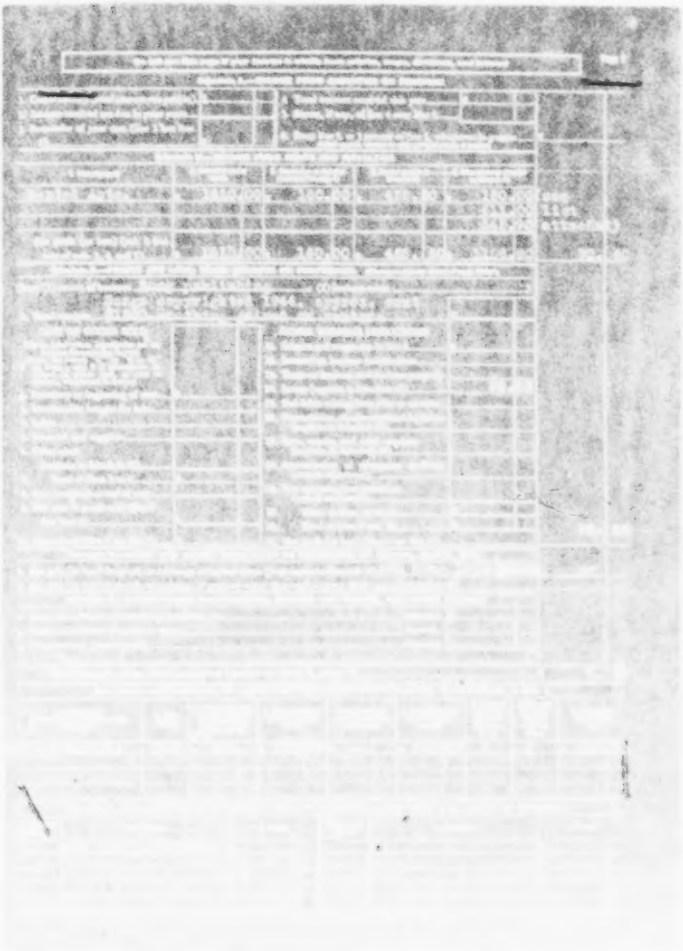
Gross rents	1,105.00	
Deduction for maintainance expenses & depr. allowed as reasonable in the absence of records & without proof	552.50	552.50
Long term capital gain:		
Gross sales price real property sold	3,075.00	
Basis allowed in excess of accumulated depreciation	1,075.00	
Gain realized	2,000.00	
Gain as limited by Sec. 117		1,000.00
Total additional income		1,552.50

*Strike out words not applicable.

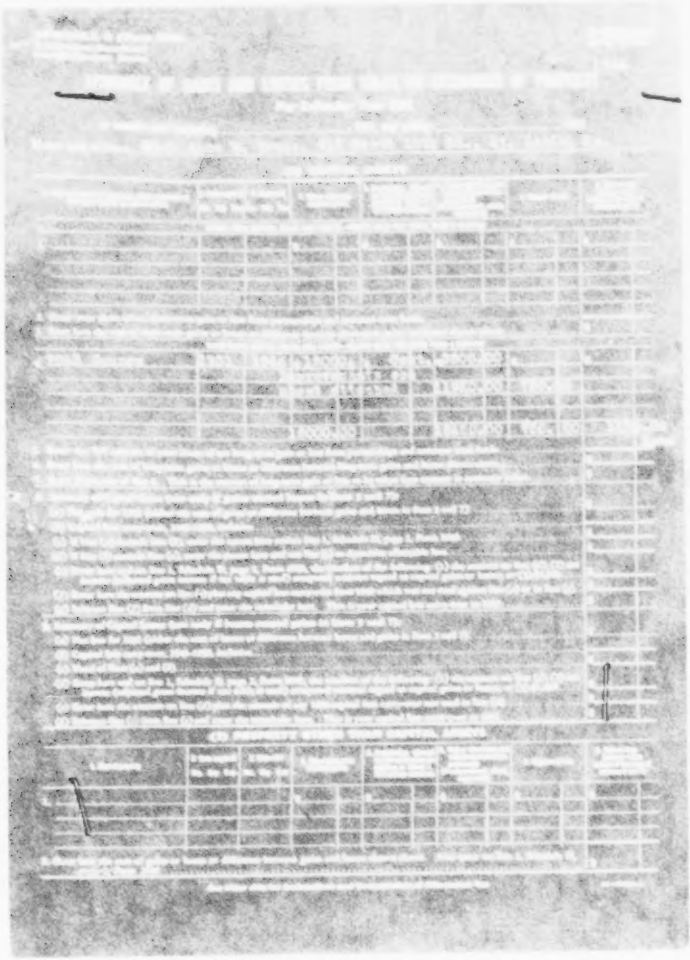
PETITIONER'S EXHIBIT NO. 7—PAGE 1

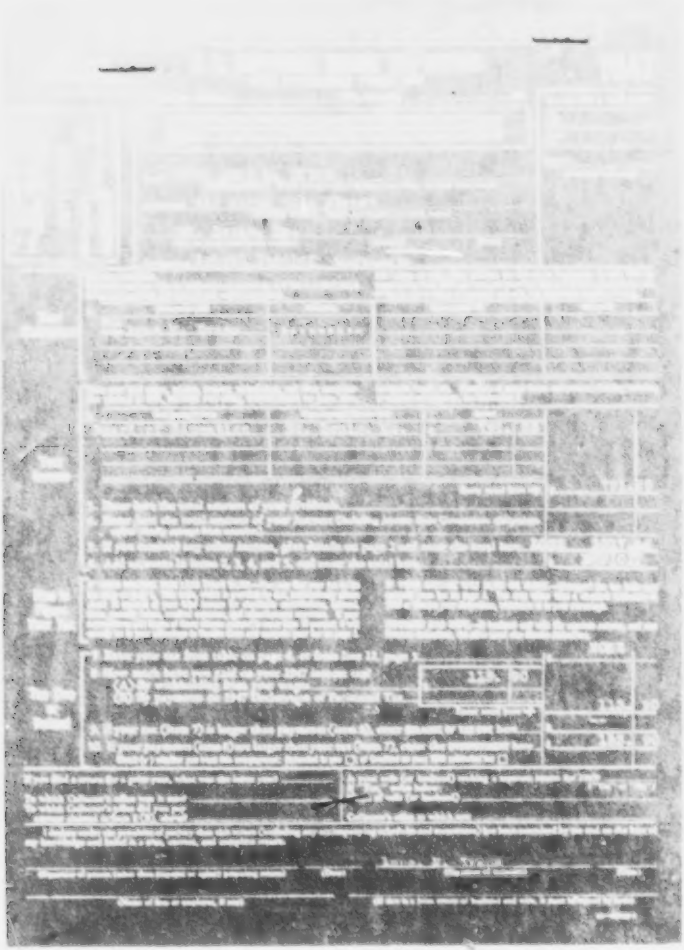


PETITIONER'S EXHIBIT NO. 7—PAGE 2 (1946)

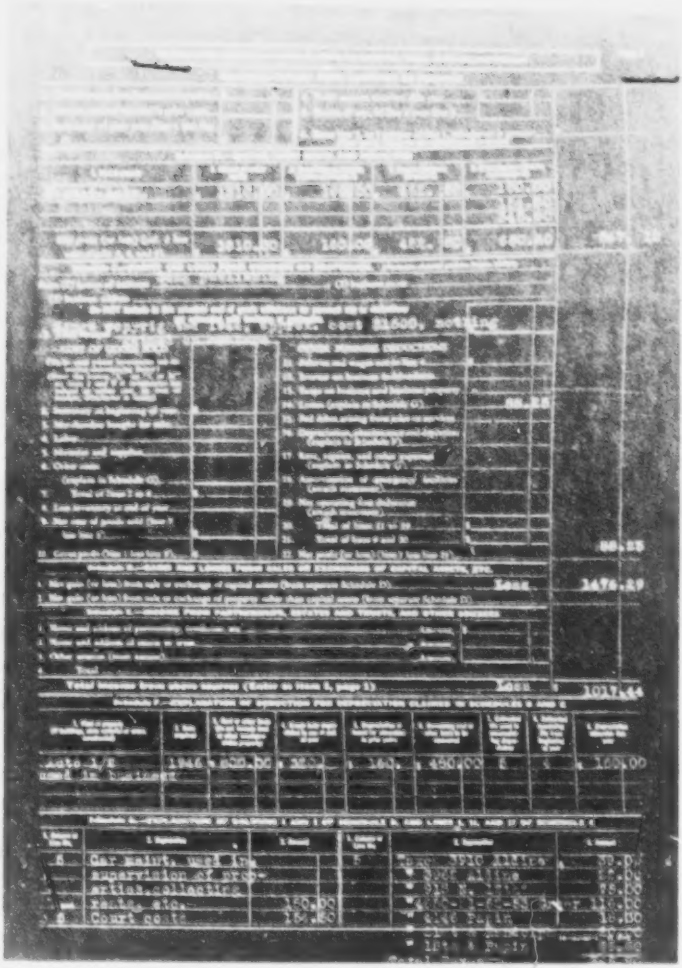


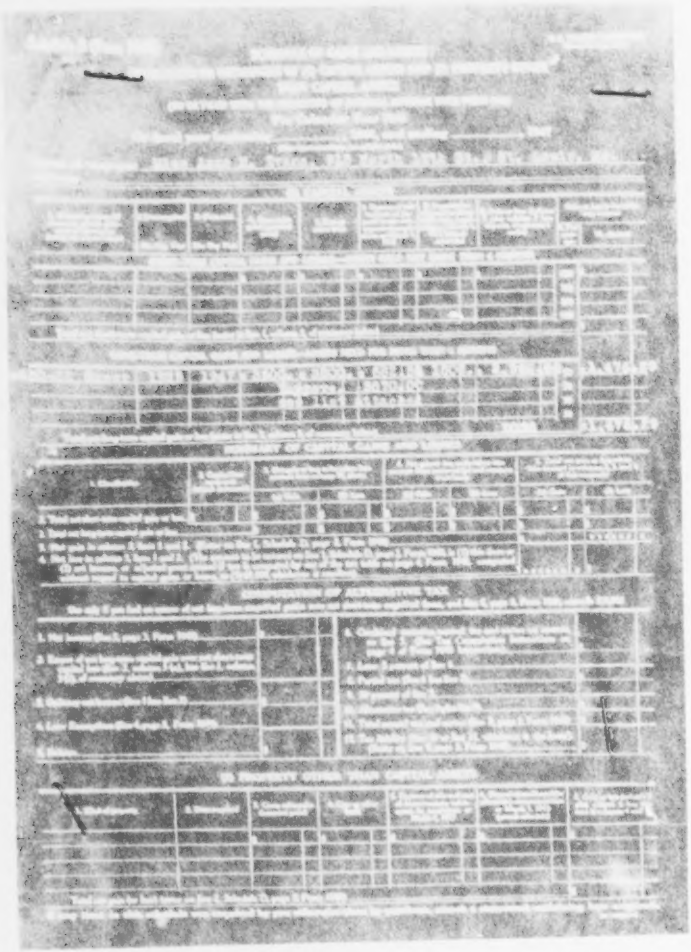
PETITIONER'S EXHIBIT NO. 7—PAGE 3

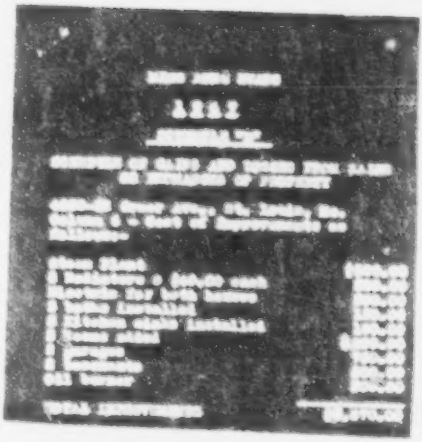




PETITIONER'S EXHIBIT NO. 8—PAGE 2 (1947)







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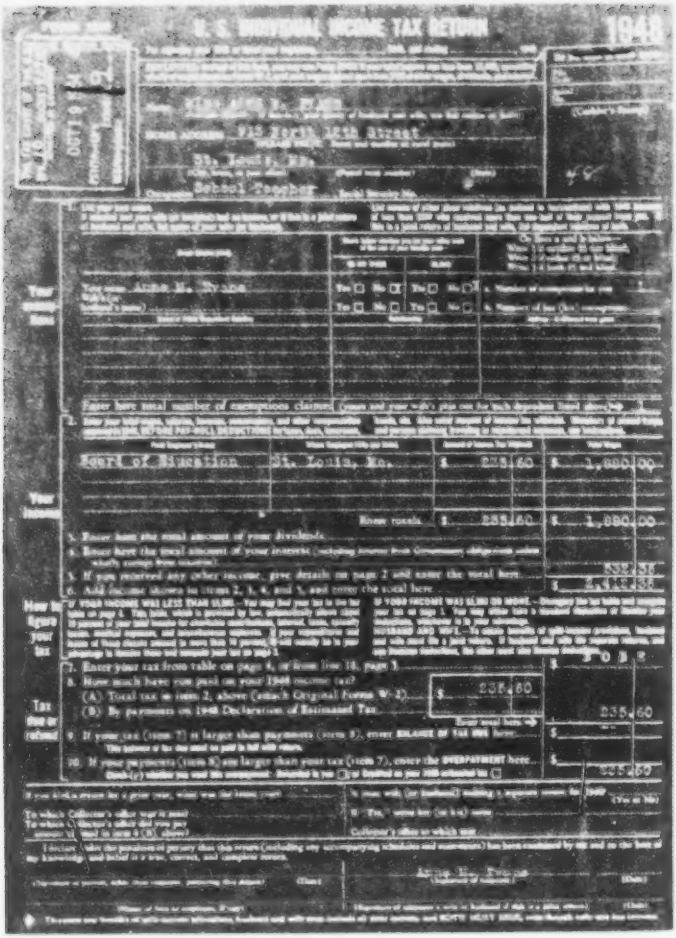
PETITIONER'S EXHIBIT NO. 9—PAGE 1



U.S. INDIVIDUAL INCOME TAX RETURN 1948

Anna M. Ryan

915 North 24th Street

St. Louis, Mo.

Bobbie Stephen

Your salary or wages

Your income

How to figure your tax

Tax due or refund

Court of Education St. Louis, Mo. $ 235.60 $ 1,880.00

Enter here total number of exemptions claimed 1

1. Enter here total wages, salaries, bonuses, commissions, and other compensations received $ 1,880.00

2. Enter here the total amount of your dividends $

3. Enter here the total amount of your interest $ 332.56

4. If you received any other income, give details on page 2 and enter the total here $

5. Add income shown in items 2, 3, 4, and 5, and enter the total here $ 2,212.56

7. Enter your tax from table on page 4, or from line 18, page 3 $

8. How much have you paid on your 1948 income tax?

(A) Total tax as per item 2, above (attach Original Forms W-2) $ 235.60

(B) By payments on 1948 Declaration of Estimated Tax $

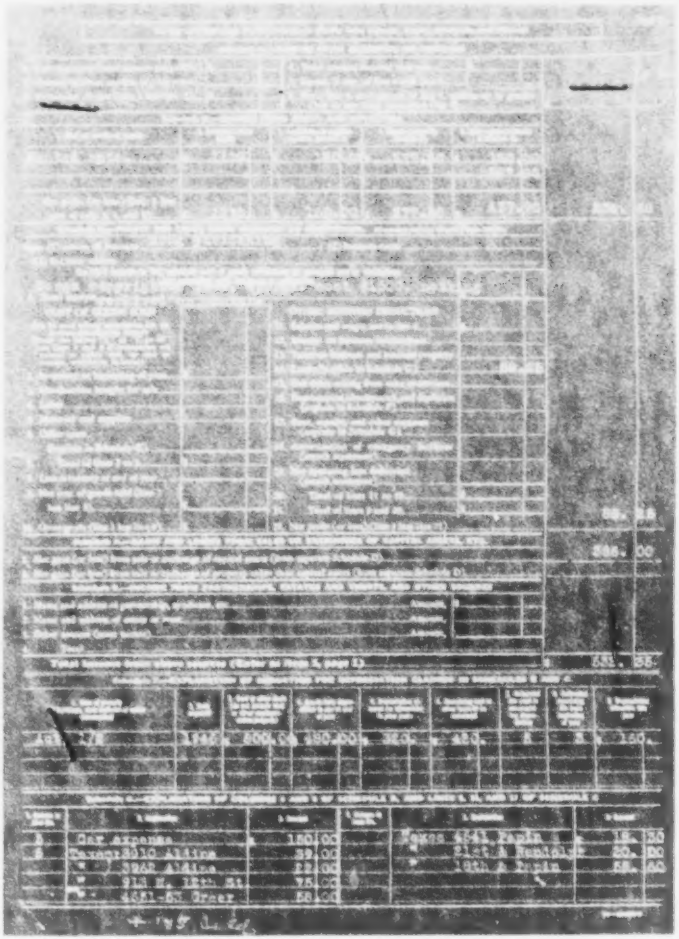
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here $

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here $ 235.60

I declare that the statements of my knowledge and belief is a true, correct, and complete return.

Anna M. Ryan

PETITIONER'S EXHIBIT NO. 9—PAGE 2 (1948)



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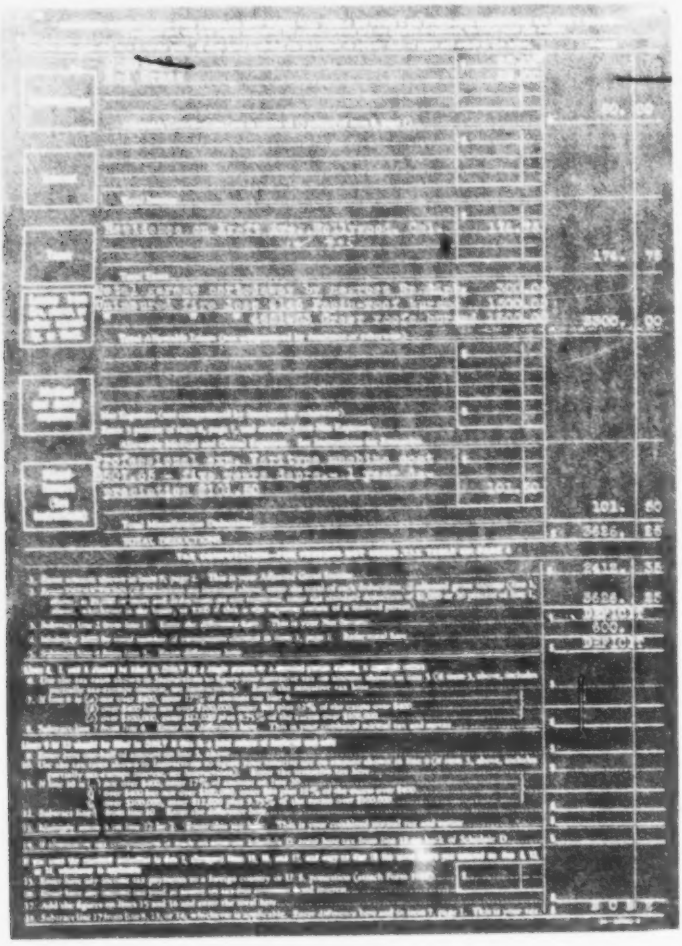
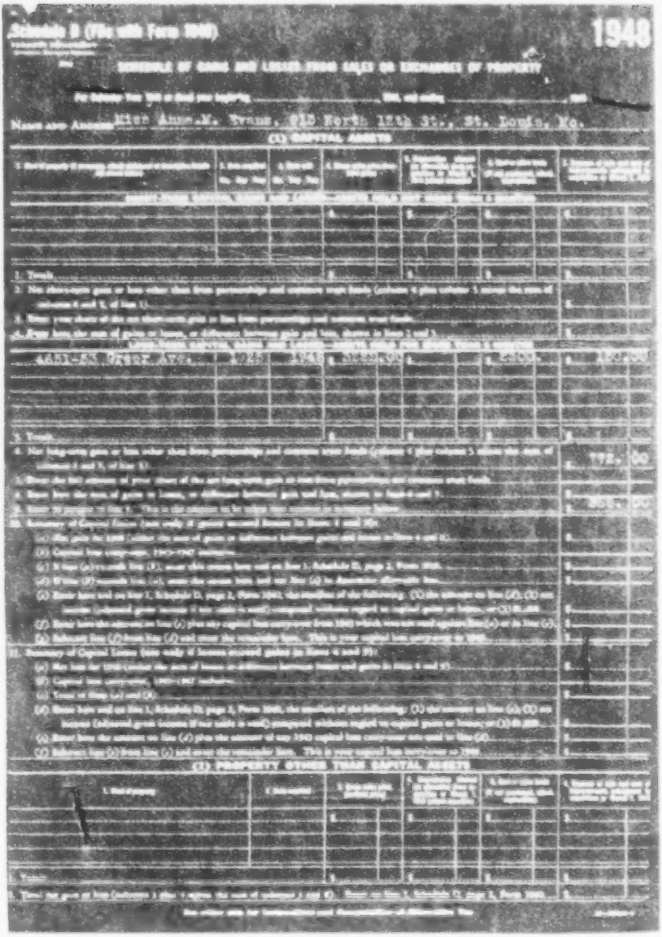
PETITIONER'S EXHIBIT NO. 9—PAGE 3 (1948)



PETITIONER'S EXHIBIT NO. 9—PAGE 4 (1948)



Schedule D (File with Form 1040) 1948

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

Name and Address: Miss Anne M. Evans, 910 North 12th St., St. Louis, Mo.

(1) CAPITAL ASSETS

1. Kind of property (If necessary, attach separate statement)	2. Date acquired (Mo., day, yr.)	3. Date sold (Mo., day, yr.)	4. Gross sales price	5. Depreciation allowed (or depletion allowed) (see Instruction 4)	6. Cost or other basis of property sold	7. Gain or (loss) (subtract col. 6 from col. 4 or add col. 5 to col. 6)
1. Totals			$	$	$	$
2. Net short-term gain or loss (enter here and on line 1, Schedule D, page 2, Form 1040)						$
3. Enter your share of the net short-term gain or loss from partnerships and common trust funds						$
4. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 2 and 3						$
4431 Cass, Overland, Mo.	12-29	1948	300.00			192.00
3. Totals			$	$	$	$
4. Net long-term gain or loss (enter here and on line 2, Schedule D, page 2, Form 1040)						192.00
5. Enter the net amount of your share of the net long-term gain or loss from partnerships and common trust funds						
6. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 4 and 5						192.00
7. Enter 50 percent of line 6. This is the amount to be added to your net income in computing income						96.00

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Date sold or exchanged	4. Gross sales price or fair market value at date of exchange	5. Depreciation allowed (or depletion allowed) (see Instruction 4)	6. Cost or other basis of property sold or exchanged	7. Gain or (loss) (subtract col. 6 from col. 4 or add col. 5 to col. 6)
			$	$	$	$
1. Totals			$	$	$	$
2. Total net gain or loss (subtract 1 after 7 against the sum of columns 5 and 6). Enter here and on line 3, Schedule D, page 2, Form 1040						$

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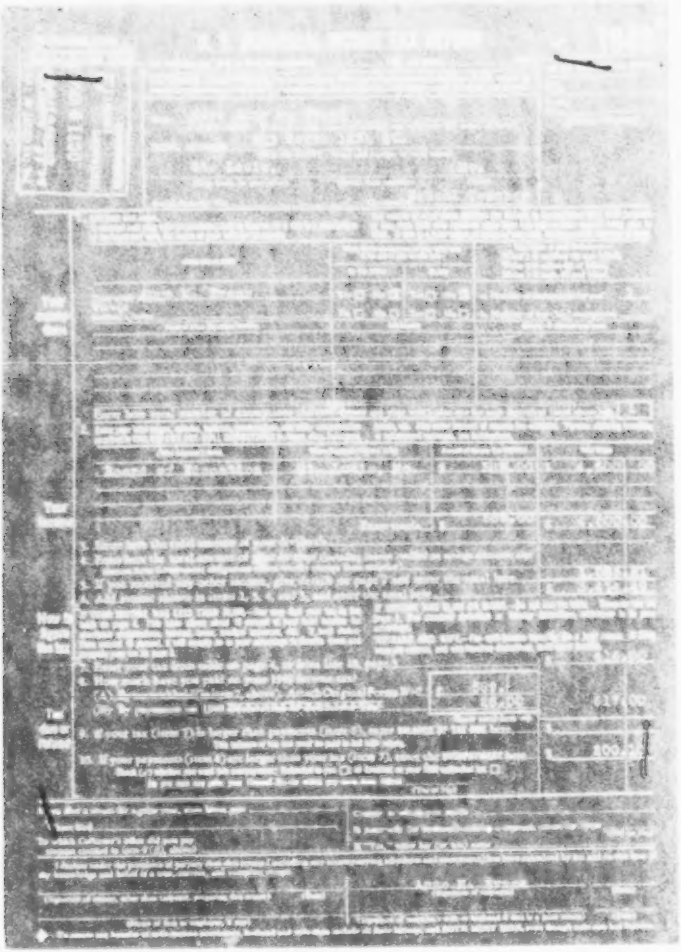
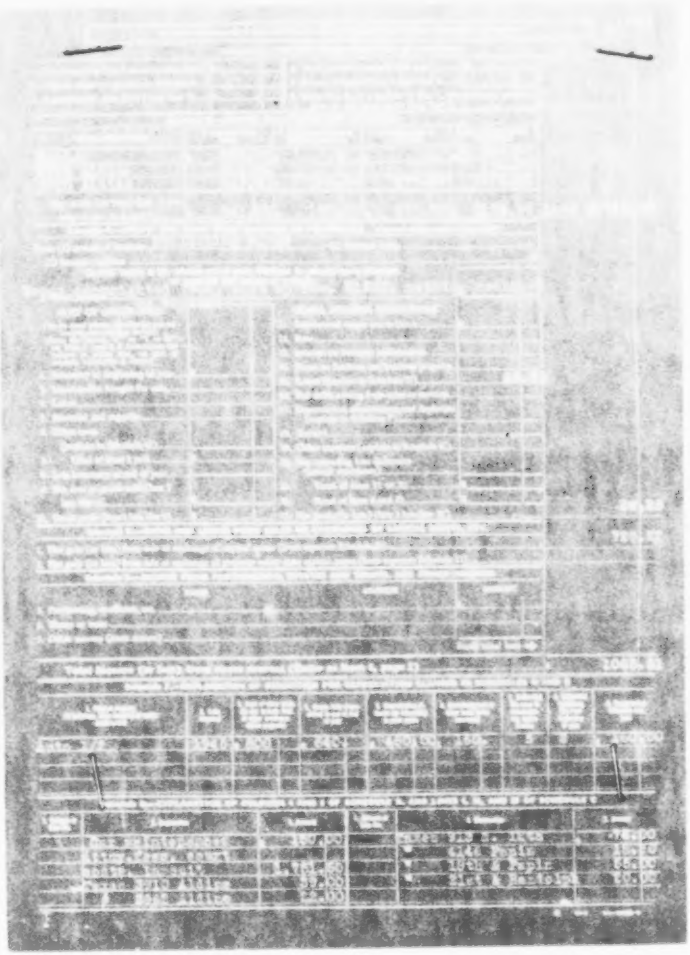
PETITIONER'S EXHIBIT NO. 10—PAGE 1



PETITIONER'S EXHIBIT NO. 10—PAGE 2



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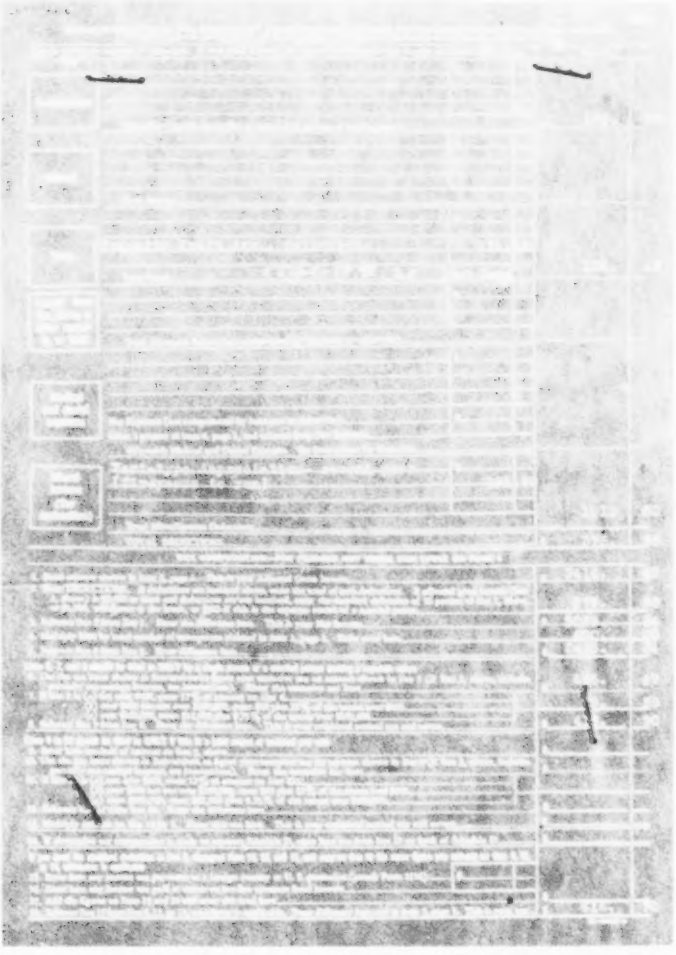
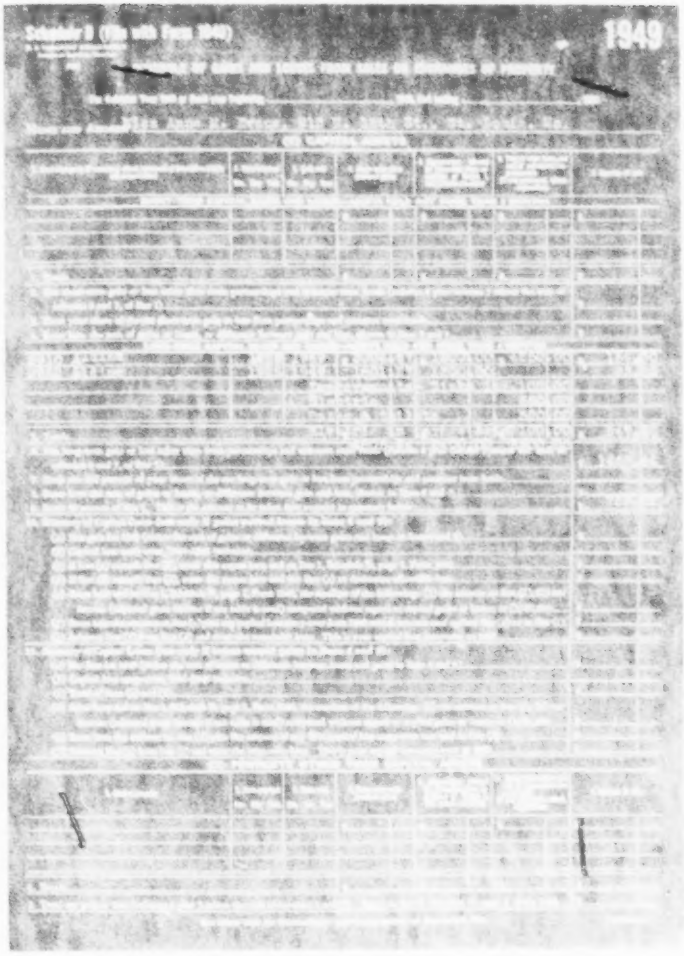
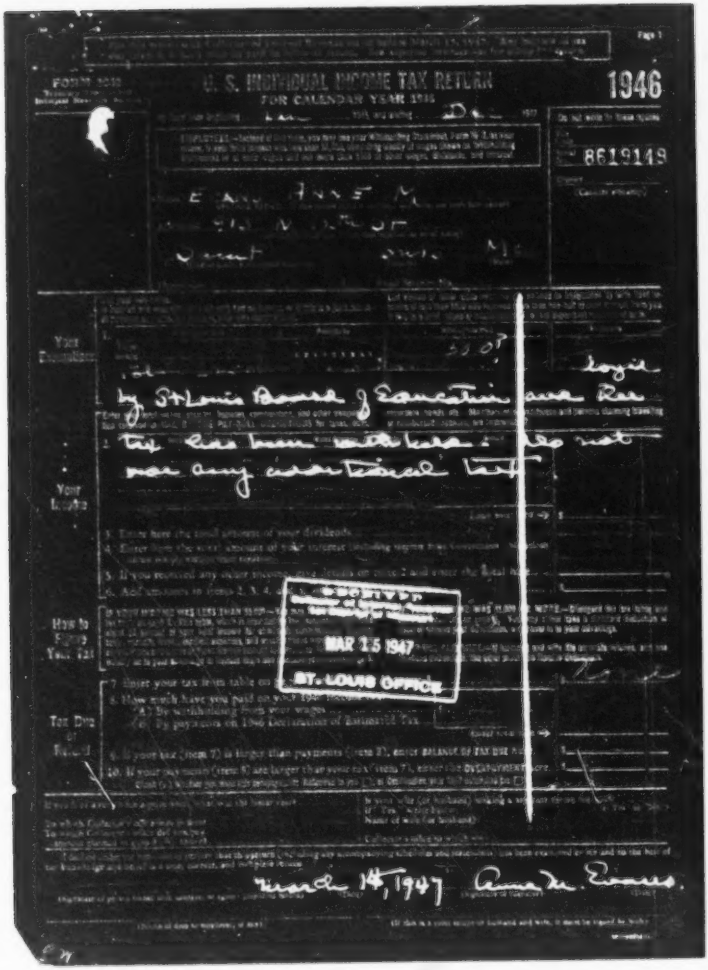
PETITIONER'S EXHIBIT NO. 10—PAGE 3 (1949)



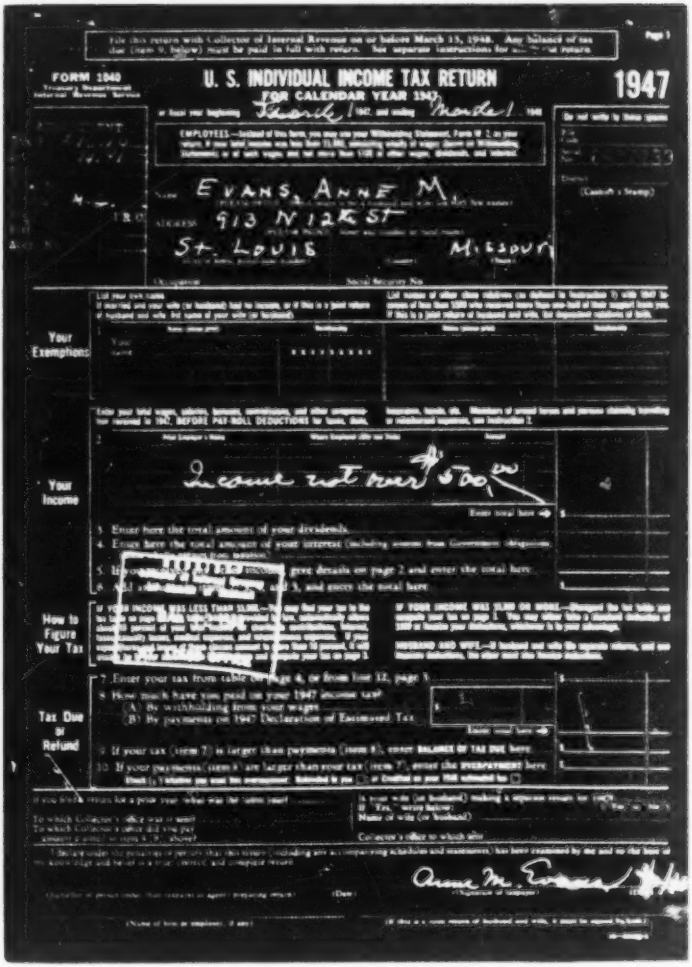
PETITIONER'S EXHIBIT NO. 10—PAGE 4



PETITIONER'S EXHIBIT NO. 48—PAGE 1



PETITIONER'S EXHIBIT NO. 49—PAGE 1



FORM 1040

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1947

1947

EVANS, ANNE M.
913 N 12TH ST
ST. LOUIS MISSOURI

Your Exemptions

Your Income

Income not over $5000

How to Figure Your Tax

Tax Due or Refund

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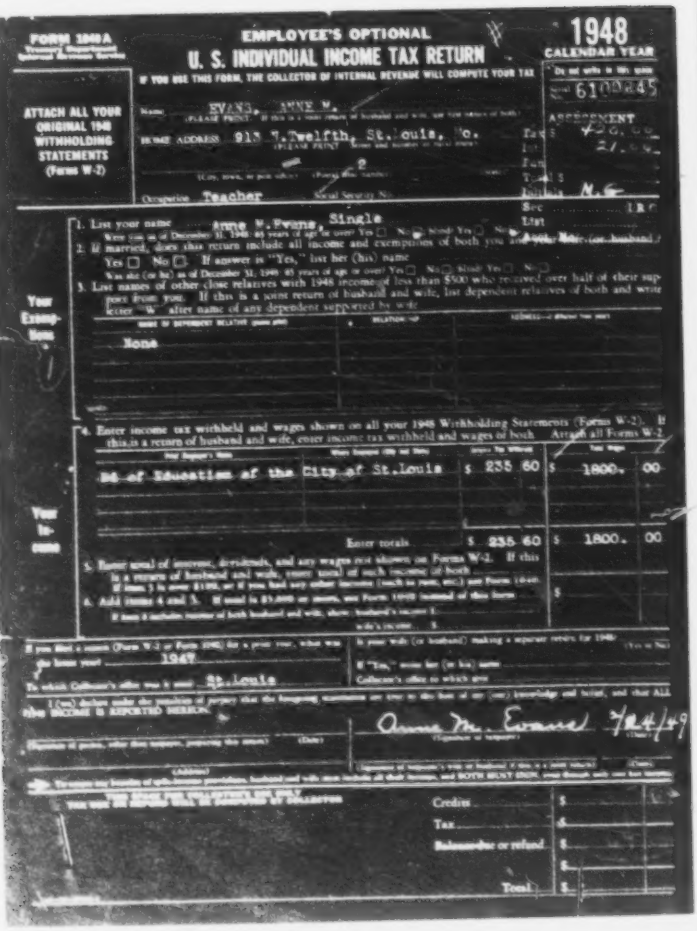
RESPONDENT'S EXHIBIT A



FORM 1040A
Treasury Department
Internal Revenue Service

EMPLOYEE'S OPTIONAL
U. S. INDIVIDUAL INCOME TAX RETURN
IF YOU USE THIS FORM, THE COLLECTOR OF INTERNAL REVENUE WILL COMPUTE YOUR TAX

1948
CALENDAR YEAR

ATTACH ALL YOUR ORIGINAL 1948 WITHHOLDING STATEMENTS (Form W-2)

Name: EVANS, ANNE M. (PLEASE PRINT)
HOME ADDRESS: 913 N.Twelfth, St. Louis, Mo. (PLEASE PRINT)
Occupation: Teacher

Do not write in this space
6100245

ASSESSMENT
Fed $ 45.00
21.00
Fed
Total $
Initials Mc

Rec
Ltr
I.R.C.

Your Exemptions

1. List your name Anne M. Evans, Single
Were you on the 1st of December 31, 1948 65 years of age or over? Yes ☐ No ☐ Blind? Yes ☐ No ☐
2. If married, does this return include all income and exemptions of both you and wife (or husband)?
Yes ☐ No ☐ If answer is "Yes," list her (his) name
Was she (or he) as of December 31, 1948 65 years of age or over? Yes ☐ No ☐ Blind? Yes ☐ No ☐
3. List names of other close relatives with 1948 income of less than $500 who received over half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both and write letter "W" after name of any dependent supported by wife.

NAME OF DEPENDENT RELATIVE (given name)	RELATION TO YOU	ADDRESS—if different from yours
None		

Your Income

4. Enter income tax withheld and wages shown on all your 1948 Withholding Statements (Forms W-2). If this is a return of husband and wife, enter income tax withheld and wages of both. Attach all Forms W-2.

Your Employer's Name	Where Employed (City and State)	Income Tax Withheld	Total Wages
Bd of Education of the City of St.Louis		$ 235 60	$ 1800. 00
	Enter totals	$ 235 60	$ 1800. 00

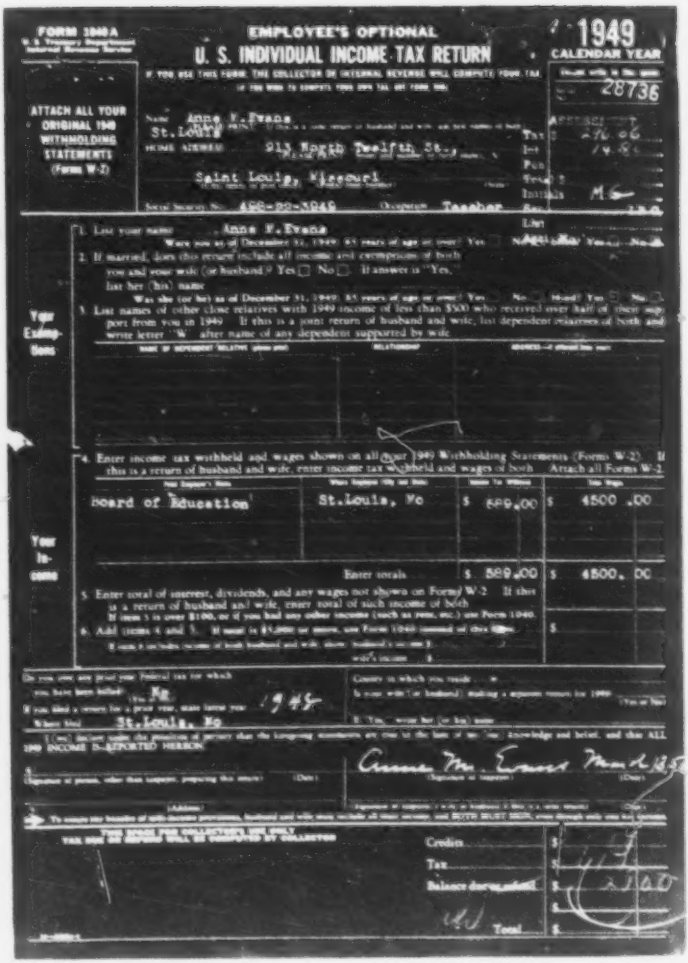
5. Enter total of interest, dividends, and any wages not shown on Forms W-2. If this is a return of husband and wife, enter total of such income of both. If more, 5 is over $1000, see If you had any other income (such as rents, etc.) use Form 1040 $
6. Add items 4 and 5. If total is $5,000 or more, use Form 1040 instead of this form. $
If items 5 includes income of both husband and wife, show husband's income $
wife's income $

If you filed a return (Form W-2 or Form 1040) for a prior year, what was the latest year? 1947
To which Collector's office was it sent? St.Louis
Is your wife (or husband) making a separate return for 1948? (Yes or No)
If "Yes," write her (or his) name
Collector's office to which sent

I (You) declare under the penalties of perjury that the foregoing statements are true to the best of my (our) knowledge and belief, and that ALL other INCOME IS REPORTED HEREIN.
Anne M. Evans 7/14/49
(Signature of taxpayer) (Date)
(Signature if joint, other than taxpayer, preparing this return)
(Address)
(Signature of taxpayer's wife or husband, if this is a joint return) (Date)

Credits $
Tax $
Balance due or refund $
Total $

RESPONDENT'S EXHIBIT B



FORM 1040A
U. S. Treasury Department
Internal Revenue Service

EMPLOYEE'S OPTIONAL
U. S. INDIVIDUAL INCOME TAX RETURN

1949
CALENDAR YEAR

IF YOU USE THIS FORM THE COLLECTOR OF INTERNAL REVENUE WILL COMPUTE YOUR TAX

28736

ATTACH ALL YOUR ORIGINAL 1949 WITHHOLDING STATEMENTS (Form W-2)

Name Anne K. Evans
(PRINT)
HOME ADDRESS 913 North Twelfth St.
St. Louis
Saint Louis, Missouri
Social Security No. 486-20-1945 Occupation Teacher

Tax $ 176.06
Int
Pen
Total $
Initials M.E.
Ret.

Your Exemptions

1. Last name Anne K. Evans
Were you as of December 31, 1949, 65 years of age or over? Yes No
2. If married, does this return include all income and exemptions of both you and your wife (or husband)? Yes ☐ No ☐ If answer is "Yes," list her (his) name
Was she (or he) as of December 31, 1949, 65 years of age or over? Yes ☐ No ☐ Blind? Yes ☐ No ☐
3. List names of other close relatives with 1949 income of less than $500 who received over half of their support from you in 1949. If this is a joint return of husband and wife, list dependent relatives of both and write letter "W" after name of any dependent supported by wife.

NAME OF DEPENDENT RELATIVE (please print)	RELATIONSHIP	ADDRESS—if different than your own

Your Income

4. Enter income tax withheld and wages shown on all your 1949 Withholding Statements (Forms W-2). If this is a return of husband and wife, enter income tax withheld and wages of both. Attach all Forms W-2.

Your Employer's State	Employer's City and State	Income Tax Withheld	Total Wages
Board of Education	St. Louis, Mo	$ 589.00	$ 4500.00
	Enter totals	$ 589.00	$ 4500.00

5. Enter total of interest, dividends, and any wages not shown on Form W-2. If this is a return of husband and wife, enter total of such income of both. If item 5 is over $100, or if you had any other income (such as rents, etc.) use Form 1040.
6. Add items 4 and 5. If total is $5,000 or more, use Form 1040 instead of this form. $
If item 6 includes income of both husband and wife, show husband's income $ wife's income $

Do you owe any prior Federal tax for which you have been billed? (Yes or No) No.
If you filed a return for a prior year, state latest year 1945
Where filed St. Louis, Mo

Country in which you reside
Is your wife (or husband) making a separate return for 1949? (Yes or No)
If "Yes," write her (or his) name

I (we) declare under the penalties of perjury that the foregoing statements are true to the best of my (our) knowledge and belief, and that ALL 1949 INCOME IS REPORTED HEREON.

Anne K. Evans March 15 (Signature of taxpayer) (Date)

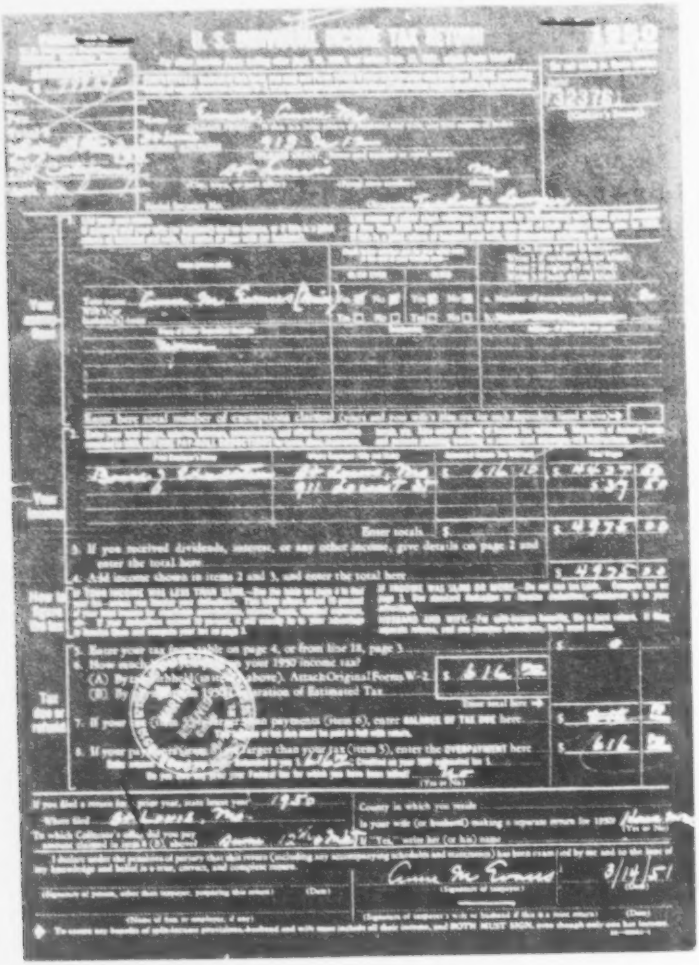
(Signature of person, other than taxpayer, preparing this return) (Date)

(Address)

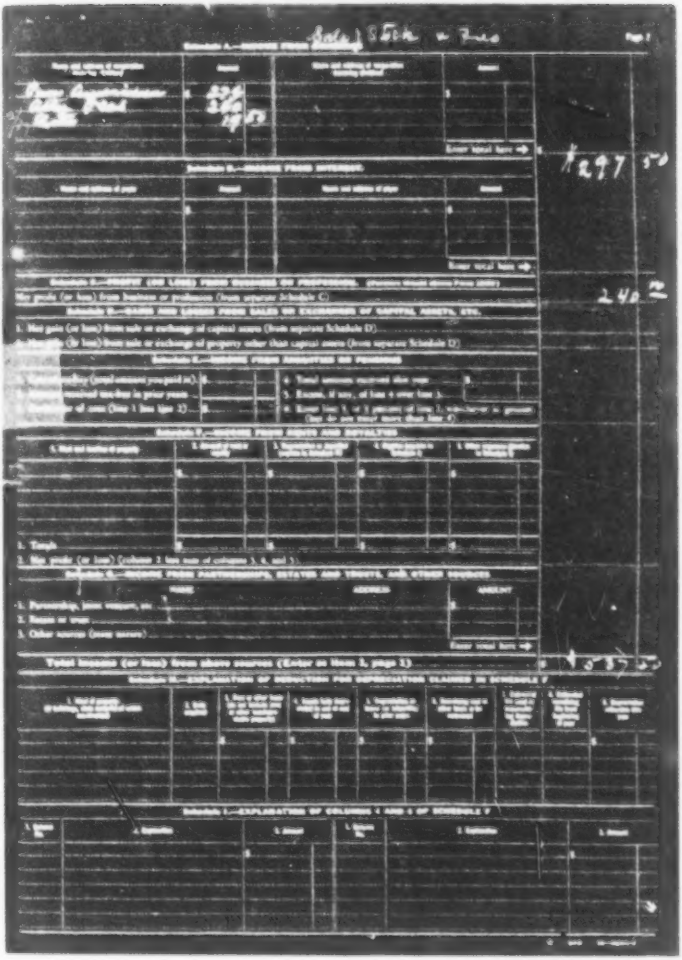
(Signature of taxpayer's wife or husband if this is a joint return) (Date)

Tax $ 176.06
Credits $
Balance due with return $ 2.140
$
Total $

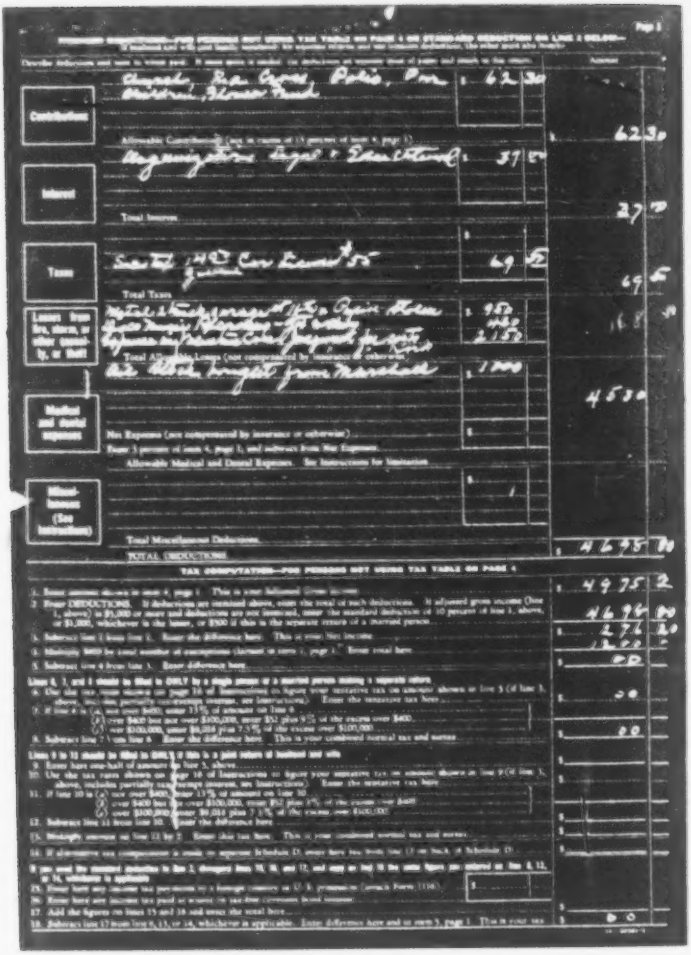
RESPONDENT'S EXHIBIT C—PAGE 1



RESPONDENT'S EXHIBIT C—PAGE 2



RESPONDENT'S EXHIBIT C—PAGE 3



The Tax Court of the United States

ANNE M. EVANS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 40910, 53127. Filed May 19, 1955.

ANNE M. EVANS, pro se.

HUNTER D. HEGGIE ESQ., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

JOHNSON, Judge: Respondent has determined deficiencies in petitioner's income tax and penalties as follows:

Docket No.	Year	Deficiency	Sec. 293 (a) Penalty
40910	1946	$1,198.96	$59.95
	1947	296.10	14.81
	1948	420.00	21.00
	1949	296.06	14.80
53127	1950	799.27	

The issues before us are:

(1) Are any of respondent's deficiency determinations barred by the statute of limitations?

(2) Did petitioner receive any gain from the sale of real property in 1946, 1947, 1948, 1949, and 1950?

(3) Was petitioner entitled to certain deductions in 1950 for a theft loss, legal expense, bad debt loss, and other miscellaneous items?

(4) Was petitioner entitled to a deduction for uninsured fire losses in 1948?

(5) Was petitioner entitled to certain loss deductions claimed as a result of publishing songs and making recordings for the years 1946 through 1950?

(6) Did petitioner receive rental income in 1946, 1947, 1948, and 1949?

(7) Is any part of the deficiencies for the years 1946 through 1949 due to negligence or intentional disregard of the rules and regulations of the Internal Revenue Code?

FINDINGS OF FACT

General

Some of the facts were stipulated and are hereby incorporated by this reference.

Petitioner, a resident of St. Louis, Missouri, filed income tax returns on form 1040 for 1946, 1947, and 1950, and on form 1040A for 1948 and 1949 with the collector of internal revenue for the first district of Missouri.

Petitioner was graduated from Vassar College in 1906 and a few years later from Benton College with a Bachelor's and Master's degree in law. She is admitted to practice law in Missouri. In addition she is also a graduate television technician.

Even though petitioner was principally occupied as a school teacher, in addition she wrote and published songs and made records under the name of the University Music Company. Petitioner also owned and operated income producing real property.

Issue I

STATUTE OF LIMITATIONS

Facts.—Petitioner filed with the collector of internal revenue for 1946 an income tax return, form 1040, dated March 14, 1947. This form contained petitioner's name, address, date, signature, and the following statement:

> Total income less than $5000. Employed by St. Louis Board of Education and the tax has been withheld. Do not owe any additional tax.

The word "None" was entered on the line calling for the amount of tax due. Petitioner did not attach any withholding statements, form W-2

At the hearing petitioner presented another form 1040 for 1946; this form was completely filled in, but it or a copy of it had not been filed with the collector. This form reported that she received $4,102.65 from the St. Louis Board of Education. She also reported $90.60 as income from rents and royalties, and there was an itemized statement showing expenses on rental property. The form showed an $88.25 loss from song publishing, a $585 loss from the sale of her home, a $160 depreciation deduction for her automobile, and a $1,170 loss for the sale of the Gannon Street property. Finally, for the computation of the tax, petitioner indicated an overpayment of $15.90.

For the year 1947 petitioner filed a form 1040 tax return dated March 12, 1948. This form contained her name, address, date, signature, and the following statement was written across the form: "Income not over $500.00." Nothing else was listed on this form; petitioner's withholding statement, form W-2, was not attached.

At the hearing petitioner presented another form 1040 for 1947. It showed a teacher's salary, income from rents, a song publishing loss of $88.25, loss from the sale of capital assets, and automobile depreciation. This form or a copy of it was not filed with the collector.

Petitioner filed a form 1040A for 1948, dated February 24, 1949. Petitioner reported a salary of $1,800 from the St. Louis Board of Education.

At the hearing she presented a filled in form 1040 showing $1,880 of teacher's salary, income and expenses from rental property, a song publishing loss of $88.25, gain from the sale of capital assets, automobile depreciation, and many itemized deductions. Among the itemized deductions were $50 for contributions, loss of a metal garage of $300, uninsured fire loss on real property, and depreciation for a Varitype machine. No tax liability was shown. This form or a copy of it was not filed with the collector.

Petitioner filed a form 1040A for 1949, dated March 13, 1950, wherein she reported a teacher's salary of $4,500.

At the hearing a form 1040 tax return for 1949 was presented and this return was similar in all respects to that described above for 1948.

Petitioner filed a form 1040 tax return for 1950, dated March 14, 1951.

Respondent's deficiency notices for 1946, 1947, 1948, and 1949 were dated February 26, 1952; petitioner received them March 3, 1952. The deficiency notice for 1950 was dated March 5, 1954; it was mailed March 8, 1954, and delivered to petitioner on March 17, 1954.

Opinion.—Petitioner contends that the statute of limitations has run for each of the years before us. Since petitioner received the deficiency notices for 1948 and 1949 on or before March 15, 1952, it is obvious that the statute of limitations under section 275 [1] of the 1939 Code is not applicable to these two years and does not bar respondent's determination.

The years 1946, 1947, and 1950 can not be resolved as simply. In 1946 petitioner failed to report any gross income. Her return merely indicated that her gross income was less than $5,000. However, even if for the sake of argument we accept $5,000 as the gross income reported by petitioner, her salary of $4,102.65, rent receipts of $1,810,[2] and gross income of $7,750 [3] from the sale of real property aggregate in excess of $13,000, which is obviously more than 25 per cent in excess of $5,000. Therefore, under section 275 (c),[4] the statute of limi-

[1] SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(f) For the purposes of subsections (a), (b), (c), (d), and (e), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[2] Hereinafter determined in Issue VI.

[3] Hereinafter determined in Issue II.

[4] (c) *Omission from Gross Income.*—If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

tations has not run for 1946. The same rule would be applicable for 1947 where petitioner reported "Income not over $500.00."

Petitioner also contends that the statute of limitations has run for 1950, and respondent is precluded under section 275 (a) from assessment of the deficiency. It is agreed by the parties that the deficiency notice for 1950 was mailed by respondent on March 8, 1954, and received by petitioner on March 17, 1954. The mailing date was well within the three-year period after the due date of petitioner's return. Nevertheless, petitioner contends that the date of receipt of the deficiency notice is controlling. Contrary to her contention, the mailing date rather than the date of receipt is the critical time. *Joseph J. Morrison;* 11 T. C. 696, 704, affd. 177 F. 2d 351. Therefore, the deficiency notice for 1950 was timely.

Respondent is not barred by the statute of limitations from assessment and collection of the tax for each of the years 1946 through 1950.

Issue II

SALE OF REAL PROPERTY

Facts.—During the years before us petitioner sold six parcels of improved real property. The sales were not reported on her income tax returns. It has been stipulated that petitioner expended $2,492.16 for improvements on this property, and that an estimated $8,000 should be allowed for cost of labor on her real estate. The figure for the labor cost has been the aggregate expenditure for nine years, four of which are before us. When the expenditures for improvements and labor are allocated to each parcel the allocation provides $415.36 for improvements and $1,333.33 for labor. Respondent has determined that the labor was used for capital improvements. A composite depreciation rate of 3 percent is reasonable and proper for petitioner's property which was sold.

(*a*) In 1946 petitioner sold property known as 7843 Gannon Avenue, University City, Missouri, for $14,600. The net sale price after fees, stamps, and sales commission was $14,064.03. Petitioner purchased the property in 1934 for $3,500. The initial cost, plus $415.36 for improvements and $1,333.33 for labor, provides a basis, without depreciation, of $5,248.69.

In the deficiency notice respondent used $15,000 as the sales price; this was reduced by original cost of $3,500, improvements of $3,000, and sales commission of $750 to give a gain of $7,750.

(*b*) In 1947 petitioner sold property known as 4650–52 Greer Avenue, St. Louis, for $3,500. She purchased this property in 1925 for $3,225.

Respondent allowed a 1947 adjusted basis of $1,000 and determined that the gain from the sale was $2,500.

(*c*) In 1948 petitioner sold two pieces of property, one known as 4651–53 Greer Avenue, and the other as 3962 Aldine Avenue, both in St. Louis. The first parcel was sold for $4,500 and the second for $1,800. Petitioner purchased the Greer Avenue property for $2,300 in 1925. The initial cost of the Aldine Avenue Property was not shown.

Respondent allowed a 1948 adjusted basis for the properties of $2,300, and determined an aggregate gain of $4,000 for both properties.

(*d*) In 1949 petitioner sold property known as 3910 Aldine Avenue, in St. Louis, for $3,025. The property was purchased in 1925.

Respondent allowed a basis of $1,025 for the property, and determined a gain of $2,000 from the sale.

(*e*) In 1950 petitioner sold property known as 4146 Papin Street, St. Louis, for $1,500.

Respondent allowed a basis of $750, and determined a gain of $750 from the sale.

Opinion.—On this issue, which involves the sale of six parcels of petitioner's real property, respondent must be sustained for 1947, 1948, 1949, and 1950. In 1946, for the sale of the Gannon Avenue property, the proven net sales price of $14,064.03, less respondent's determined basis of $6,500 shall be used to compute gain from the sale.

Petitioner has proved certain expenditures for repairs, improvements, and labor, but she has not offered sufficient proof to show respondent's determination to be in error. It must be pointed out that respondent allowed bases which were in excess of those proved by petitioner.

Issue III

DEDUCTIONS FOR 1950

(*a*) *Theft loss.*

Facts.—Petitioner had a two-ton all metal truck garage on one parcel of her land. Sometime in 1948 or 1950 the garage was stolen. In 1950 petitioner claimed a theft loss of $950, and respondent disallowed the loss.

Opinion.—Respondent must be sustained on the disallowance of the claimed theft loss for the garage. Petitioner has not proved in which year the loss occurred, nor has she proved the amount of the loss.

(*b*) *Legal expense—Valentin case.*

Facts.—On April 7, 1944, Theodore Bradley, nephew of William N. Valentin, filed an information in the probate court in the City of St. Louis charging that Valentin was a person of unsound mind and incapable of managing his affairs and property. Bradley requested that an inquiry be had. Four days later, petitioner, who had known Valentin as a teacher in the St. Louis school system, took him to a specialist in disease of the mind and nervous system for an examination. At the conclusion of the examination the specialist formed an opinion that Valentin was capable of managing his affairs. Immediately petitioner had Valentin execute a power of attorney appointing her his attorney to handle his financial affairs. Valentin's estate was then valued at some $65,000.

Following the execution of the power of attorney, petitioner entered her appearance as Valentin's counsel in the probate court. On April 26, 1944, at a hearing before a jury, there was a verdict that Valentin was of unsound mind and incapable of managing his affairs. Petitioner appealed to the circuit court and that court, on its own motion, appointed an associate counsel for Valentin. On June 7, 1944, a verdict was returned that Valentin was of unsound mind and incapable of managing his affairs. In due time the judgment of the court was certified to the probate court. On June 21, 1944, the probate court appointed Ben F. York as guardian of Valentin's person and estate.

On October 5, 1944, petitioner filed a claim against the estate of Valentin, an insane person. This claim was founded upon an account for legal services allegedly rendered by petitioner to Valentin from April 1, 1944, to October 1, 1944. The item claimed for legal services was $1,500. Expenses brought the total to $1,808.43, less a credit of $500. The probate court disallowed the claim but after a trial to a jury in the circuit court judgment was returned for petitioner. The case was appealed and in *Evans* v. *York*, 195 S. W. 2d 902, the St. Louis Court of Appeals held on June 18, 1946, that petitioner was not entitled to receive the full amount of her demand which the lower court gave her. The case was then reversed with directions.

Upon retrial of the case in the circuit court a verdict was returned in favor of the defendant York. Again, upon petitioner's appeal to the St. Louis Court of Appeals on December 21, 1948, in *Evans* v. *York*, 216 S. W. 2d 124, the judgment was affirmed in York's favor. Sometime later petitioner again sought to recover the sum of $6,280.69 alleged to be due her for services as attorney for Valentin. The trial court dismissed the case and on February 15, 1949, the St. Louis Court of Appeals in *Evans* v. *York*, 217 S. W. 2d 749, held that petitioner "had no right to act for Valentin, and is not entitled to any compensation for attempting to do so."

On Petitioner's 1950 tax return she deducted $2,150 as expenses in the Valentin case. Respondent disallowed this deduction.

Opinion.—Petitioner has not shown that any legal expenses were incurred in the year the deduction was claimed. It appears from the facts that even if petitioner were properly entitled to a deduction, all of the expenses incurred in the Valentin case occurred in years prior to 1950 which is the year she claimed the deduction. Petitioner has not proved the amount or the propriety of the claimed deduction in 1950.

(*c*) *Bad Debt Loss.*

Facts.—On January 25, 1950, petitioner in connection with some oil transactions received an interest-bearing demand note from Humphrey Marshall for $2,000. This note was also executed by Lucile Ballinger and Frances Stillwell as co-makers.

Petitioner experienced difficulty in collecting the $2,000 from Marshall and as a result she sued the estate of Frances Stillwell for $1,000 and collected it. The suit was not entered for the entire amount because she did not want to take it all from the estate. In 1950 petitioner deducted for the Marshall transaction $1,000 as a loss from worthless oil stock. Respondent disallowed the deduction.

Opinion.—Petitioner received $1,000 on Marshall's note by legal process but she voluntarily declined to pursue her legal remedy for the entire amount. Further, she did not prove that she could not collect the remaining $1,000 from Marshall or Lucile Ballinger, the other co-makers. Petitioner has not shown the claimed debt to be bad in 1950 and respondent's disallowance of the bad debt deduction must be sustained.

(d) 1950 Miscellaneous Deductions.

Facts and Opinion.—In her petition for 1950 petitioner relied on certain alleged errors in the deficiency notice. Some of these errors have been considered above and now we shall consider the remainder.

Petitioner claimed an itemized deduction of $14.50 for "Sales tax" and $55 for "Car License." Respondent disallowed these deductions. We have examined the evidence presented by petitioner to support them and we find that they were proper.

Again petitioner claimed that respondent erred when a $1,000 deduction for depreciation was not allowed on certain California property. This deduction was not claimed on her 1950 return but was claimed at a later date for that year. Petitioner has not shown that she was entitled to this deduction and respondent must be sustained.

Petitioner also claimed certain other deductions on account of contributions and interest. We cannot find that the claimed deductions were supported by petitioner's proof. Therefore, respondent's disallowance must be approved.

Issue IV

Fire Loss

Facts.—Sometime prior to December 21, 1945, petitioner suffered fire damage in a building located at 4651–53 Greer

Avenue. In 1946 she received two proposals to repair the damage. Both proposals indicated that the damage could be repaired for less than $950.

Petitioner also sustained a fire loss at 4146 Papin Street prior to January 14, 1947. A building permit was issued to repair the damage, and the estimated cost of the repair as indicated on the permit was $400.

Petitioner claimed a deduction for 1948 of $1,500 for 4651–53 Greer Avenue and $1,500 for 4146 Papin Street. These deductions were not claimed on her 1948 return, but were claimed in her petition, and on an exhibit presented at the hearing.

Opinion.—Respondent's disallowance of petitioner's claimed fire loss deduction for the Greer Avenue property should be approved. The fire occurred and the loss was sustained prior to December 21, 1945. Since this is prior to any year before us, the deduction may not be allowed.

However, a loss deduction for the Papin Street property should be allowed. Petitioner proved a loss of $400, rather than the claimed $1,500, and from the record we also find that the loss was sustained in 1947 rather than in 1948.

Issue V

MUSIC EXPENSE

Facts.—Petitioner owned and operated the "University Music Company." This company published sheet music and issued records under its own label. Copyrights for most of its music had been secured by petitioner.

In 1942 the University Music Company published a list of 22 songs that were available for sale.

It is stipulated that petitioner spent $7.01 on her music activities in 1946; $1,158.37 in 1947; $1,122.50 in 1948, and $11.58 in 1949. It was also stipulated that petitioner spent money on music activities as early as 1938. The stipulation does not describe how this money was spent other than that it was spent for "music."

In 1942 petitioner entered into a licensing agreement with Broadcast Music, Inc., of New York City. In 1952 this agreement was terminated by mutual consent. For some time prior

to the termination of the agreement petitioner had not sent her music to Broadcast Music, Inc.

Petitioner did not report any sales or expenditures for her music business for the years 1946 through 1949; in 1950 she claimed a deduction for "Disco Music Recording" in the amount of $430.

Opinion.—Petitioner in her petitions, but not on the returns filed with the collector, claimed a loss of $88.25 for the production and copyrighting of songs for each of the years 1946 through 1949. She also claimed a deduction of $430 on her 1950 return for "Disco Music Recording." Respondent has disallowed these deductions contending that the expenditures were investments in the University Music Company, and in the alternative that they were nondeductible personal expenses for a hobby.

It is impossible from this record to determine the purpose for which petitioner conducted her music activities. Did her activities constitute a business, did she work for a profit, or was it for some personal activity such as a hobby? Petitioner did not keep books, in fact she did not keep any adequate records from which profit or loss could be computed. We have no sales figures, actual, estimated, or determined, for any of the years 1938 through 1950. It has been stipulated that petitioner made no money from her music activities, and except for a single exhibit for 1942 there is no showing that petitioner attempted to profit from her music activities in the years before us. There is, however, evidence that petitioner used some of her music in 1952 for political purposes, not only for herself as a candidate for Congress, but also for a presidential candidate.

It appears that petitioner, herself, did not consider that she was in a music business. She did not report on her tax returns any sales or expenses for her music activities for the years 1944 through 1949. Even the reference to the claimed deduction in her 1950 return did not indicate that she was engaged in a music business. On this record respondent must be sustained for we are unable to find that petitioner was in business or that she engaged in her music activities for profit.

Issue VI

RENTAL INCOME

Facts and Opinion.—Petitioner did not report any receipts or expenses for her rented real property for the years 1946, 1947, 1948, and 1949. Respondent determined that petitioner received gross rental receipts of $1,810 in 1946, $1,810 in 1947, $1,110 in 1948, and $1,105 in 1949. At the hearing petitioner admitted the gross rental receipts as determined by respondent for 1946, 1947, and 1948; she admitted the receipt of $841.82 in 1949.

Petitioner's claimed expenses for the income producing property, including aggregate depreciation of $160 for each year, was $1,719.40 in 1946, $1,262.90 in 1947, $875.40 in 1948, and $2,568.30 in 1949. However, at the hearing she proved expenses exclusive of depreciation, of $259.24 in 1946, $71.38 in 1947, $276.72 in 1948, and $208.03 in 1949.

Even if we were to accept petitioner's claimed depreciation of $160, her proven expenses are much less than her claimed expenses. On the other hand, respondent has allowed for expenses and depreciation, $905 for 1946, $905 for 1947, $555 for 1948, and $552.50 for 1949.

Respondent determined that the difference between gross rental receipts and allowances for expenses and depreciation constituted petitioner's rental income. Petitioner has not shown respondent to be in error, therefore respondent's determination must be sustained.

Issue VII

NEGLIGENCE PENALTY

Facts.—Petitioner, an attorney admitted to practice in the State of Missouri, attended tax institutes sponsored by the Missouri Bar Association, and also some sponsored by the American Bar Association. She taught high school classes in mathematics. In addition, she taught students the proper method of filling out income tax forms.

Opinion.—Part of the deficiencies for 1946, 1947, 1948, and 1949 was due to petitioner's negligence or intentional disre-

gard of the rules and regulations in the preparation of her income tax returns. Respondent has determined under section 293 (a)[5] that some part of the deficiencies on petitioner's income tax returns for 1946 through 1949 was due to negligence or intentional disregard of the rules and regulations of the Internal Revenue Code. A determination of negligence is not to be taken lightly, and the record when such a determination has been made must be circumspectly examined. This we have done and can only conclude that respondent must be sustained.

Some of the facts which constrain us to sustain respondent's penalty determination are as follows:

Petitioner had particular knowledge of Federal income tax matters. She was an attorney admitted to practice law in Missouri. She taught students how to prepare Federal income tax forms. Petitioner failed to keep formal books or even records which would properly account for her gains or losses.

Perhaps the most conclusive evidence of negligence is the manner in which petitioner filed her tax returns. In 1946 and 1947 she actually reported no income. She failed to report salary, rental income, gain from the sale of property, and various other items. In 1948 and 1949 she did report a teacher's salary but no other gain. Petitioner has not explained, either at the hearing or on brief, why her income producing transactions were omitted from her returns. It is proper on the record before us that respondent's determination for a penalty under section 293 (a) be sustained.

In addition to those errors alleged in the petitions and in their amendments, petitioner, at the hearing and on brief, stated that she was entitled to many other deductions. For example, some of these were found on filled in tax forms which were presented at the hearing but which had not been filed with the collector of internal revenue. There is considerable doubt in the first instance whether these claimed deductions

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[5] SEC. 293.—ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

(a) *Negligence.*—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, * * *.

are properly in issue, but even if we were to assume that they are in issue, none of these claimed deductions or expense items have been proved. As proof of the claims petitioner has submitted such evidence as a receipt for $16.91 paid in 1948 for used automobile tires. We find as another exhibit a 3 x 5 card which contains a description of a "Victor projector" and its accessories; there is a notation at the bottom of the card, "$490.00." There is also a stub of an airplane ticket indicating that $177.79 had been paid in 1946 for air travel between Fort Worth, Texas, and St. Louis. These exhibits and others like them might be evidence of a proper deduction or loss, but in themselves, and without being tied down to a specific year, use, or purpose, they do not prove the propriety of petitioner's claims.

It may appear that petitioner has unduly suffered as a result of the rule that the burden of proof is upon her. However, her unenviable position is one of her own making, not only because she has failed to keep adequate records but more properly because she has not recognized that she has the burden of proof in these proceedings.

It was stipulated that petitioner expended certain sums, but she has presented her case in such a fashion that she has not shown when many of these sums were paid or for what purpose they were paid.

Respondent on brief conceded property tax payments of $174.75 for her Kraft Avenue, California, property in 1948, and $283.73 for 1950. These, together with petitioner's admitted salary of $1,880 for 1948, shall be properly considered in a Rule 50 computation.

Decisions will be entered under Rule 50.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 410

ANNE M. EVANS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case involves income tax deficiencies for 1946 through 1950 and penalties, for the first four years, under Section 293 (a) of the Internal Revenue Code of 1939. Upon petition for a redetermination of such deficiencies and penalties by the Tax Court, the case was heard as prescribed by law and after ample opportunity was given for the introduction of evidence by the petitioner, who had the burden of proof, the case was decided against the petitioner on all but two minor points. The basic reason for the Tax Court's decision on the major issues, which were primarily questions of fact, was that the petitioner had failed to produce the evidence necessary to overcome the presumption of correctness which attaches to the

Commissioner's determinations. (Supp. R. 41–54.) Upon appeal, the Court of Appeals held that it found no basis to declare any part of the Tax Court's decision to be clearly erroneous and affirmed the decision. (Pet. 12.)

There is no basis, therefore, for petitioner's allegations here that her constitutional rights have been violated. Such allegations, it appears, are made by petitioner, who is her own attorney, because she has confused the issues to be decided, does not understand the meaning of burden of proof, and has failed properly to apply to the facts of her case long-established rules relating to tax cases, particularly the rule covering allowable deductions. That petitioner's case presents no issue warranting further review is shown by the following brief summary of the issues decided by the Tax Court and reviewed by the Court of Appeals:

Issue I (Supp. R. 42–45) was whether the Commissioner was barred by the statute of limitations from assessing the taxes and penalties involved here. Deficiency notices for 1946 and 1947 were received by petitioner on March 3, 1952, but, as the Tax Court found that she had omitted more than 25 percent of her gross income from her returns for those years, the Commissioner had five years in which to make an assessment under 1939 Code Section 275 (c), and the notices were sent before expiration of that period.

Deficiency notices for 1948 and 1949, which were also received by petitioner on March 3, 1952, were also timely because they were sent within the three-year period allowed by 1939 Code Section 275 (a) and (f)

for assessments under ordinary circumstances. The deficiency notice for 1950 was also timely for, although not received by petitioner until March 17, 1954, she admitted that it had been mailed on March 8, and Code Section 272 (a) clearly indicates that it is the mailing date which is controlling.

Issue II (Supp. R. 45–46) involved the gain realized from the sale of six parcels of property owned by petitioner. The Tax Court found that she failed to produce sufficient proof to show that the Commissioner's determination was erroneous.

Issues III and IV (Supp. R. 47–50) involved four deductions claimed by petitioner. These were all denied for the following respective reasons: (1) There was no proof when the asserted loss by theft occurred or its amount; (2) there was no proof that the alleged legal expenses occurred in the year claimed; (3) there was no proof that the alleged bad debt was in fact bad in the year claimed; and (4) the evidence showed that the claimed loss by fire occurred prior to the taxable years here.

Issue V (Supp. R. 50–51) involved expenses incurred for the publishing of songs written by petitioner and in making musical recordings. The Tax Court found that music was only a hobby with petitioner and that her expenditures were not made in connection with any business. Thus these were personal expenses and not allowable under 1939 Code Section 23 (a).

Issue VI (Supp. R. 52) involved rentals received by petitioner from property which she owned. The Tax

Court found that she failed to prove that the amount of rentals determined by the Commissioner was erroneous.

Issue VII (Supp. R. 52–54) involved penalties for the years 1946 through 1949. The Commissioner determined that part of the deficiencies for those years was due to petitioner's negligence or intentional disregard of rules and regulations in the preparation of her income tax returns. Thus he imposed penalties under Code Section 293 (a). Those penalties were sustained by the Tax Court which indicated that they were properly imposed because the petitioner, who is an attorney and has taught students to prepare federal income tax returns, claims to have a particular knowledge of federal income tax matters but has failed to keep records or explain her failure to report all of the income she has received. In upholding the Tax Court's decision on this issue, the Court of Appeals also pointed out that the petitioner had allowed looseness and carelessness to exist in the making of her tax returns. (Pet. 12.)

It is submitted that the petitioner has had a fair hearing in both of the courts below and that the petition for a writ of certiorari does not present any question which merits review by this Court.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

OCTOBER 1956.

Office - Supreme Court, U.S.
FILED
OCT 30 1956
JOHN T. FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 410

Anne M. Evans, Petitioner

v.

Commissioner of Internal Revenue
T. Coleman Andrews, Incumbent, now resigned.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the 8 th Circuit.

Before
Judges Sandburn, Johnson and Vogel.

PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM

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Ce. 1-1859.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. 410

Anne M. Evans, Petitioner

v.

Commissioner of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO RESPONDENT' S MEMORANDUM

This case involves the reviewing of the Tax-Court' s Decision on the major issues which Respond - ent' s Attorney claims were primarily questions of fact but which Petitioner claims was an unconstitutional procedure in establishing such facts in violation of Petitioner' s individual rights under the United States and the Missouri Constitutions, and the ordinary rules of State and Federal Courts; that the statements made in all of the seven issues charged, were a : distortion of the truth, and a miss-statement of the facts, and not admissable in evidence, because not made in Court under oath, and so not subject to cross-examination.

Respondent' s Memorandum ignores the Issues raised by the Petitioner, and is an evasion of Petitioner' s As-signment of Errors (Record pages 59-67) and her Points at Issue as summed up in her Petition for Writ of Cer-tiorari, and is not pertinent to Petitioner' s Questions presented for Review on Pages 4, 5, 6 and 7 of her App -

lication for the Writ, and the violation of Amendment IV requiring oath or affirmation, V. not requiring her to testify or give evidence against herself, VI the right to be confronted by the witnesses against her, XIV the denial of due process of law, when no ruling was given on constitutional questions raised; and Art. 1, Sec. 10 prohibiting ex post facto laws, and Art. 1, Sec. 15 of the Missouri Constitution, requiring oath or affirmation of the facts charged by her accuser.

Further replying to Respondent's Memorandum, the Petitioner claims that the presumption of the correctness of the facts set out in Deficiency letters as claimed by Respondent's Attorney, does not attach in this case to the Commissioner's determinations, because in filing an Amended Answer, asking that the five year instead of the three year statute of limitations apply, for the mailing of the deficiency letter, the commissioner has assumed the burden of proof, as admitted by the Court on Page 30 at the trial.

It is claimed by Respondent that the case was heard 'as prescribed by law', but this was not true, for Louis Kane, the Internal Revenue agent was petitioner's accusor. His initials L.K. appeared on each deficiency letter, having made out the statements contained therein, but he never substantiated them by sworn statements before the Court. Respondent introduced only one witness, who testified under oath on cross-examination, that he did not send out any Deficiency letters to this Petitioner at any time, a violation of Petitioner's constitutional right to be confronted by the witnesses against her, and so the case was not heard as prescribed by law for the Constitutional questions raised by petitioner,

Nov. 16, 1953 (Record p. 13) were not ruled on by the Court before Petitioner was required to put on her evidence, and have never been ruled on, thus denying Petitioner due process of law under the XIV Amendment of the Unit- States. Nor was ample opportunity given the Petitioner to put on all her evidence, as shown by the very large losses she sustained in the Prante and Buente cases in the U. S. Supreme Court Cases No 688 and 641, property to which she held sheriff's deeds, having bought it from the City of St. Louis at the execution of a judgment in rem. She had dictated from vouchers and checks, presented actual expenses which were allowable deductions to the amount of $16,468.20 for 1946 to 1949 inclusive R. page 9 plus an estimated three years or $24,000. (R 60) far exceeding the gross income claimed, and the loss of her house at Centerville, Missouri, to which she still held the key. (See U. S. Ct. Cases 688 Oct. Term 1955 including Mo. Supreme Court cases No. 44,701 and No. 44,807 and Federal Injunction suit, U. S. S. C. No. 641. In all of which cases petitioner's Petition for the Writ of Certiorari, were denied.

As a matter of fact, without consideration of the aforesaid cases, petitioner showed she had paid her tax in full for the five years, and had received a refund of $616.00 March 15, 1951, and her taxes settled satisfactorily before any deficiency letter was sent. Petitioner had dictated allowable deductions to the Secretary of Respondent's Attorney, under his supervision, and had 3 years more, when the Judge advised that it was necessary for him to return to Washington, and indicated that sufficient evidence had been presented so it was necessary to close the case. With that under-

the final argument was presented.

Respondent's Attorney says that the main issues in the case were questions of fact, determined by the Court which petitioner claims were untruths, based on the presumptions of an unsworn revenue agent, Louis Kane, arbitrarily assumed, and wrong mathematical calculations of an inexperienced but ambitious attorney for the Respondent, Hunter D. Reggie; That the real issue is the violation of the state and federal constitutions in accepting such assumptions and presumptions of fact, not under oath, as evidence Tax payments had been made and collected from her Employer, and deductible expenses claimed as advised by Revenue agents, and refunds made within the three years allowed by statute; yet reopening the case, Feb 26, 1952, demanding evidence again of thirty years ago, making ex-post facto rulings that her Music Business was only a hobby and deductions for expenditures should not have been allowed and was then added to the amount, to be charged with additional taxes, and assessing penalties for negligence against the tax-payer, when the negligence and corruption was in the Bureau itself as evidenced by jail sentences of the former Internal Revenue Collector himself, and the Attorney of his predecessor, and even involving perjury by public Officials, resulting in their confiscation of petitioner's private property, for which she has been allowed no amount as deductible losses. in the Buente and Prante cases, supra, because she was advised the matter was still in Court; using these methods to enforce a collection of $4,10816 after having settled the taxes due for 1946-1950 in 1951. contrary to decision in Tax Court of the U.S. Report of April 26, 1956 in re Fred M. Saigh, in claim for an increased deficiency 'The stipulation is binding.' See also U.S v. Town of Clarksville 224 Fed (2nd) 712. 713.

SUMMARY

In this case, the facts stated in the Deficiency - Letters are not acceptable as evidence, because not under oath or testified before the Court by anyone having personal knowledge of the facts; This eliminates Respondent's claims that Petitioner did not report one fourth of her gross income, and hence the 3 year statute of limitations applies to all five years, 1946, 1947 1948, 1949 and 1950. In 1950, the deficiency letter was received by petitioner, delivered by a U.S. Govt. empl - oyee, on March 17, 1954, hence not timely as there was no sworn testimony of the revenue agent as to the date he mailed it. Her tax payments for each of the five years had been duly made, and audited and the last refund was by Treasury check No. 18, 492, 861 for $616.00 dated May 1, 1951, nearly ten months before the first Deficiency letter was mailed, and under Sec. 7121(b)(1), it may not be reopened See Saigh case, supra, and 111 Steel Co. cited therein, No. 141 Wis. 119, pages 124-125.

The Commissioner was barred by the Statute of limitations from re-opening the case, and assessing additional taxes and penalties after 3 years, under 1939 Code, Section 275 (a), all of the Deficiency letters received after 3 years. (R. 55, 56.)

Petitioner's contention that her constitutional rights have been violated by accepting as evidence a statement of facts not given under oath, was duly raised Nov. 20, 1953 (R. 13 and 14) never having been ruled on at any time, should be sustained. The case should be reversed and remanded for refund.

Respectfully submitted,

Anne M. Evans, Atty for Petitioner

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